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ERNEST J. GALDI,
Acting Director,
Office of the Federal Register.

April 1, 1980.

THIS TITLE

Title 25—INDIANS is composed of one volume. The contents of this volume represent all current regulations codified under this title of the CFR as of April 1, 1980.

A redesignation table for Chapter I—Bureau of Indian Affairs, Department of the Interior, appears in the Finding Aids Section of this volume.

For this volume Mildred L. Isler was Chief Editor, assisted by Kathryn McGrant-English. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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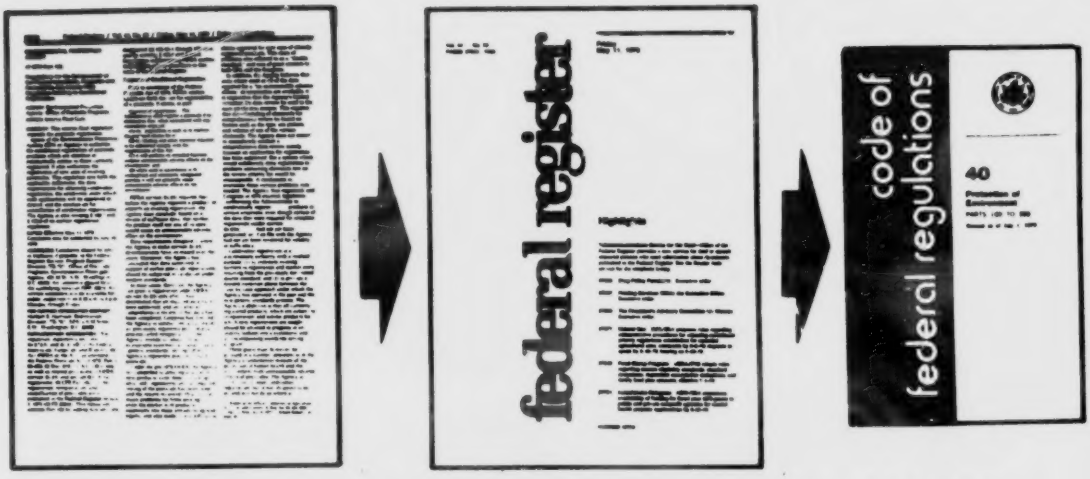

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SUBCHAPTER A—PROCEDURES; PRACTICE

PART 1—APPLICABILITY OF RULES OF THE BUREAU OF INDIAN AFFAIRS

Sec.

1.1 [Reserved]
1.2 Applicability of regulations and reserved authority of the Secretary of the Interior.
1.3 Scope.
1.4 State and local regulation of the use of Indian property.
1.10 Availability of forms.

AUTHORITY: 5 U.S.C. 301; R.S. 463, 25 U.S.C. 2.

SOURCE: 25 FR 3124, Apr. 12, 1960, unless otherwise noted.

§ 1.1 [Reserved]

§ 1.2 Applicability of regulations and reserved authority of the Secretary of the Interior.

The regulations in Chapter I of Title 25 of the Code of Federal Regulations are of general application. Notwithstanding any limitations contained in the regulations of this Chapter, the Secretary retains the power to waive or make exceptions to his regulations as found in Chapter I of Title 25 of the Code of Federal Regulations in all cases where permitted by law and the Secretary finds that such waiver or exception is in the best interest of the Indians.

§ 1.3 Scope.

Chapters I and II of this title contain the bulk of the regulations of the Department of the Interior of general application relating to Indian affairs. Subtitle B, Chapter I, Title 43 of the Code or Federal Regulations contains rules relating to the relationship of Indians to public lands and townsites. Subtitle A of Title 43 of the Code of Federal Regulations has application to certain aspects of Indian affairs and, among other things, contains procedural rules for appellate and other administrative review and for practice before the Department of the Interior, of which the Bureau of Indian Affairs is a part. Indian health matters are covered in 42 CFR Part 36. Title 30 of the Code of Federal Regulations contains regulations on oil and gas and other mining operations, which, under certain circumstances, may be applicable to Indian resources.

[25 FR 3124, Apr. 12, 1960, as amended at 40 FR 20625, May 12, 1975]

§ 1.4 State and local regulation of the use of Indian property.

(a) Except as provided in paragraph (b) of this section, none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political subdivision thereof limiting, zoning or otherwise governing, regulating, or controlling the use or development of any real or personal property, including water rights, shall be applicable to any such property leased from or held or used under agreement with and belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

(b) The Secretary of the Interior or his authorized representative may in specific cases or in specific geographic areas adopt or make applicable to Indian lands all or any part of such laws, ordinances, codes, resolutions, rules or other regulations referred to in paragraph (a) of this section as he shall determine to be in the best interest of the Indian owner or owners in achieving the highest and best use of such property. In determining whether, or to what extent, such laws, ordinances, codes, resolutions, rules or other regulations shall be adopted or made applicable, the Secretary or his authorized representative may consult with the Indian owner or owners and may consider the use of, and restrictions or limitations on the use of, other property in the vicinity, and such other factors as he shall deem appropriate.

[30 FR 7520, June 9, 1965]

§ 1.10 Availability of forms.

Forms upon which applications and related documents may be filed and upon which rights and privileges may

be granted may be inspected and procured at the Bureau of Indian Affairs, Washington, D.C., and at the office of any Area Director or Agency Superintendent.

PART 2—APPEALS FROM ADMINISTRATIVE ACTIONS

Subpart A—General

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2.1 Definitions.
2.2 Applicability.
2.3 Appeals.
2.4 Notice of administrative action.

Subpart B—Appeals to the Area Director and Commissioner

2.10 Appeal, how taken; mandatory time limit.
2.11 Service of appeal documents.
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2.13 When a document is filed.
2.14 Record address.
2.15 Computation of time for filing and service.
2.16 Extensions of time.
2.17 Summary dismissal.
2.18 Action by Area Director on appeal.
2.19 Action by Commissioner on appeal.
2.20 Scope of review.

AUTHORITY: R.S. 463, 465; 5 U.S.C. 301, 25 U.S.C. 2, 9.

Subpart A—General

§ 2.1 Definitions.

As used in this part:

(a) "Person" includes any Indian or non-Indian individual, corporation, tribe, or other organization.

(b) "Interested party" means any person whose interests would be adversely affected by proceedings conducted under this part.

(c) "Appellant" means any person who files an appeal under this part.

(d) "Appeal" means a written request for correction of an action or decision claimed tc violate a person's legal rights or privileges.

(e) "Complaint" means a written request for correction or reconsideration of an action or decision claimed to be legally or administratively incorrect but not violative of the complainant's own legal rights or privileges.

(f) "Right" means a favorable position in a legal relationship, the continued enjoyment of which may not be withdrawn save by a change in fundamental constitutional law.

(g) "Privilege" means a favorable position in a legal relationship, the continued enjoyment of which may be withdrawn only upon a change in law, statute or regulations upon which the relationship is based.

[25 FR 9106, Sept. 22, 1960, as amended at 40 FR 20625, May 12, 1975]

§ 2.2 Applicability.

This part provides appeals procedures for requesting correction of actions or decisions by officials of the Bureau of Indian Affairs where the action or decision is protested as a violation of a right or privilege of the appellant. Such rights or privileges must be based upon fundamental constitutional law, applicable Federal statutes, treaties, or upon Departmental regulations. Such regulations appear in the FEDERAL REGISTER and, where of general application in Indian affairs, in Title 25 of the Code of Federal Regulations. "Appeals" shall be processed in accordance with the regulations in this part. "Complaints," on the other hand, may be either informally or formally made and ordinarily first presented to the office immediately responsible for the action or decision questioned and thereafter if necessary to higher officials. An action or decision which is subject to appeal shall be reduced to writing by the official making the decision either at his own instance or upon request of the petitioner. The appeal procedures in this part do not apply to decisions made under statutes or other regulations which provide specific appeals procedures, nor to "complaints."

[25 FR 9106, Sept. 22, 1960]

§ 2.3 Appeals.

(a) Except as otherwise provided by law or regulation, any interested party adversely affected by a decision of an official under the supervision of an Area Director of the Bureau of Indian Affairs not approved by the Secretary before the decision was made shall have a right to appeal. Where administrative authority is held under an Area Director, the appeal shall be to

him. A further appeal from decisions of the Area Director may then be made to the Commissioner of Indian Affairs. As prescribed in § 2.19(b) of this Part, further appeals from the decisions of the Commissioner of Indian Affairs may then be made to the Board of Indian Appeals.

(b) If no appeal is timely filed, the decision shall be final for the Department. The officer to whom the appeal is directed may require an adequate bond to protect the interest of any Indian, Indian tribe, or other party involved during the pendency of the appeal. In order to insure the exhaustion of administrative remedies before resort to court action, no decision which at the time of its rendition is subject to appeal to a superior authority in the Department shall be considered final so as to be agency action subject to judicial review under 5 U.S.C. 704, unless when an appeal is filed, the officer to whom the appeal is made shall rule that the decision appealed from shall be made immediately effective.

(c) Appeals to the Board of Indian Appeals shall be made in the manner provided in Department Hearings and Appeals Procedures in 43 CFR Part 4, Subpart D, §§ 4.350-4.369.

[40 FR 20626, May 12, 1975]

§ 2.4 Notice of administrative action.

Notice shall be given of any action taken or decision made from which an appeal may be taken under the regulations in this part, to any Indian or Indian tribe whose legal rights or privileges are affected thereby. This notice shall be in writing and shall be given by the official making the decision or taking the action. Failure to give such notice shall not affect the validity of the action or decision, but the right to appeal therefrom shall continue under the regulations in this part for the periods hereinafter set forth.

[25 FR 9106, Sept. 22, 1960]

Subpart B—Appeals to the Area Director and Commissioner

SOURCE: 40 FR 20626, May 12, 1975, unless otherwise noted.

§ 2.10 Appeal, how taken; mandatory time limit.

(a) A notice of appeal shall be in writing and filed in the office of the official who made the decision that the appellant wishes to appeal. The date of receipt shall be noted or stamped on the notice of appeal by the receiving office. The official who made the decision being appealed from, if requested by an Indian or Indian tribe, shall render such assistance as is appropriate in the preparation of any appeal by an Indian or Indian tribe. The appeal shall give an identification of the case, a statement of reasons for the appeal, and any arguments the appellant wishes to make. The notice of appeal must be received in the office of the official who made the decision within 30 days after the date notice of the decision complained of is received by the appellant, together with all supporting documents. The appellant shall file his appeal with the Area Director or the Commissioner within 30 days after filing of the notice of appeal in the office of the official who made the decision being appealed.

(b) No extension of time will be granted for filing of the notice of appeal. Notices of appeal which are not timely filed will not be considered, and the case will be closed.

§ 2.11 Service of appeal documents.

(a) On the date of filing of the notice of appeal, the appellant, or the officer with whom the notice of appeal is filed when the appellant is an Indian or Indian tribe not represented by counsel, shall personally serve or mail a copy of the notice of appeal and/or other appeal and any supporting documents upon each interested party known to him as such, in the manner prescribed in paragraph (b) of this section. The proof of such service shall be filed with the Area Director or the Commissioner within 15 days after the date of service unless filed with the appeal or with any additional statement of reasons, arguments, or briefs. The date of service is determined as stated in paragraph (c) of this section. When an appeal is being filed with the Commissioner, a copy of the notice of appeal shall also be

served on or mailed to the Board of Indian Appeals.

(b) Wherever the regulations require that a copy of a document be served, service shall be made by delivering the copy personally or by sending the document by certified or registered mail, return receipt requested, to the address of record as required in § 2.14. Where a tribe is an interested party, service shall be made on the principal or designated tribal official or on the tribal governing body.

(c) A document will be considered to have been served at the date (1) of acknowledgment of service, (2) of personal service, (3) of delivery of a certified or registered letter, or (4) of the return by the post office of an undelivered certified or registered letter.

(d) In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the same on behalf of his client; and service of any document relating to the proceeding upon such attorney shall be deemed to be service on the party he represents. Where a party is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

§ 2.12 Answers.

If any party served with an appeal wishes to participate in the proceeding on appeal, he must file a written answer within 30 days after service of the appeal upon him. The answer must be filed with the Area Director or the Commissioner and be personally served upon or mailed to the appellant, in the manner prescribed in § 2.11, at the time the answer is filed. Proof of such service shall be filed with the Area Director or the Commissioner within 15 days after service. If an answer is not filed or if a copy is not served, as required, a default will not result; but the answer may be disregarded in deciding the appeal.

§ 2.13 When a document is filed.

A document is properly filed when received in the office of the official with whom the filing is required during regular office hours. No degree of formality is required to file a notice of appeal; a simple letter will suffice. The appellant need not be represented by counsel. A notice of appeal and/or appeal received in an office other than that to which it should be properly addressed shall be transmitted to the proper office and the appellant advised. If such office is unknown where received, it shall be returned to the writer.

§ 2.14 Record address.

Every interested party who files a document in connection with an appeal shall state his address at the time of his notice of appeal or initial filing in the matter. Thereafter, he shall promptly inform the official with whom the filing was made of any change in address, giving appropriate identification of all matters in which he has made such a filing; otherwise, the address, as stated, shall be accepted as the proper address. The successors of such party shall likewise promptly inform the official of their interest in the matter and state their addresses. If an interested party fails to furnish his address as required in this section, he will not be entitled to notice in connection with the proceedings.

§ 2.15 Computation of time for filing and service.

In computing any period of time prescribed herein for filing or serving a document, the day upon which the decision or document to be appealed or answered was received or served, or the day of any other event after which the designated period of time begins to run, is not to be included. The last day of the period so computed is to be included unless it falls upon a Saturday, Sunday, legal holiday, or other nonbusiness day.

§ 2.16 Extensions of time.

The period for filing or serving any document may be extended on behalf of an interested party by the officer to whom the appeal is taken, for good cause shown, except for the time for filing a notice of appeal and except where such extension is contrary to law or regulation.

§ 2.17 Summary dismissal.

An appeal to the Area Director or the Commissioner may be subject to

summary dismissal for any of the following causes:

(a) If a statement of the reasons for the appeal is not included in the appeal.

(b) If the notice of appeal and/or appeal together with any supporting documents are not filed or not served upon the interested parties as required in §§ 2.10, 2.11, and 2.13 of this Part.

§ 2.18 Action by Area Director on appeal.

The Area Director shall render a written decision in each case appealed to him, and he shall include a statement that the decision will become final 60 days from receipt thereof unless a notice of appeal is filed with the Commissioner of Indian Affairs pursuant to §§ 2.10, 2.11, and 2.13 of this Part. A copy of such decision shall be forwarded to each known interested party by certified or registered mail, return receipt requested. Such receipts shall become a permanent part of the record.

§ 2.19 Action by Commissioner on appeal.

(a) Within 30 days after all time for pleadings (including extension granted) has expired, the Commissioner of Indian Affairs shall:

(1) Render a written decision on the appeal or

(2) Refer the appeal to the Board of Indian Appeals for decision.

(b) If no action is taken by the Commissioner within the 30-day time limit, the Board of Indian Appeals shall review and render the final decision.

(c) When the Commissioner renders a written decision on an appeal, he shall include one of the following statements in the written decision:

(1) If the decision is based on the exercise of discretionary authority, it shall so state; and a statement shall be included that the decision is final for the Department.

(2) If the decision is based on interpretation of law, a statement shall be included that the decision will become final 60 days from receipt thereof unless an appeal is filed with the Board of Indian Appeals pursuant to 43 CFR 4.354 and 4.355.

(d) A copy of the Commissioner's written decision in each case shall be forwarded to each known interested party by certified or registered mail, return receipt requested. Such receipts shall become a permanent part of the record. A copy of the Commissioner's written decision in each case shall also be sent to the Board of Indian Appeals.

§ 2.20 Scope of review.

When a matter on appeal is before an Area Director or the Commissioner of the Bureau of Indian Affairs, any information available to that officer may be used whether formally part of the record or not; where reliance is placed on information not of record, such information shall be identified as to source and nature and inserted in the record.

PART 5—RESERVATION ACCELERATION PROGRAM (RAP)

Sec.

5.1 Purpose.
5.2 Applicant eligibility.
5.3 Application submission and acceptance.
5.4 Implementation procedures.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 37 FR 23262, Nov. 11, 1972, unless otherwise noted.

§ 5.1 Purpose.

The regulations in this part govern the procedures by which Indian or Native Alaska communities may negotiate with the Bureau of Indian Affairs to restructure the Bureau's programs.

§ 5.2 Applicant eligibility.

Applicant must be an Indian or Native Alaska community currently receiving services from the Bureau of Indian Affairs or an intertribal organization representing a group of such communities.

§ 5.3 Application submission and acceptance.

(a) The governing body of the community or the intertribal organization making application must support participation in the Reservation Acceleration Program by a formal resolution. The resolution requesting participation in the program may be submitted

at any time to the Commissioner of Indian Affairs.

(b) If the applicant is a community or communities served by a single Bureau of Indian Affairs Agency which serves no other communities, the Commissioner of Indian Affairs will, within 30 days after the date the application is received, inform the applicant of the date when negotiations may begin. In other cases, the Commissioner will direct members of his staff to meet with the applicant to develop special procedures that are acceptable both to the Commissioner and to the applicant. As soon as such procedures are accepted, a date for the start of negotiations will be announced.

§ 5.4 Implementation procedures.

(a) Leaders of communities selected to participate in the program will meet with the staff of the Bureau of Indian Affairs Agency that serves their communities to familiarize themselves with all aspects of the current Bureau program in their locality. The governing body will then prepare recommendations for changes in the Bureau program that it feels will support the comprehensive development plans of the community. These recommendations will be discussed with the Agency staff to determine if the Superintendent has the authority to implement them. When agreement is reached on those recommendations which are within the Superintendent's authority, he will implement them providing the changes proposed will not adversely affect services to other communities. All RAP recommendations will be forwarded to the area office.

(b) The same procedures described for negotiations at the Agency level will also apply at the area office level. In addition, when a community indicates it would be willing to exchange Bureau funds or staff in a single activity for funds or staff of another activity, the Area Director will be responsible for contacting other communities within his service area to inform them of the offer. When such an exchange is agreed to by all parties, the Area Director will implement it. Other recommendations that are within his authority and on which agreement is reached will also be implemented immediately by the Area Director.

(c) All RAP recommendations will then be forwarded to the Central Office where the negotiation process will be repeated. The Commissioner will be responsible for contacting other area offices to facilitate program exchanges that could not be made within a single area.

(d) Upon completion of the Central Office negotiations, the agreement will be signed by the tribal leader, the Superintendent, the Area Director and the Commissioner of Indian Affairs.

(e) The Area Director will be responsible for making any changes in the staffing or program of the area office that are necessary to implement the agreement.

SUBCHAPTER B—LAW AND ORDER

PART 11—LAW AND ORDER ON INDIAN RESERVATIONS

Application; Jurisdiction

Sec.
11.1 Application of regulations.
11.2 Jurisdiction.

Courts Of Indian Offenses

11.2CA [Reserved]
11.3 Judges.
11.3CA [Reserved]
11.4 Removal of judges.
11.5 Court procedure.
11.5CA [Reserved]
11.6 Appellate proceedings.
11.6C Appellate proceedings.
11.6CA [Reserved]
11.7 Juries.
11.7C Juries.
11.8 Witnesses.
11.8CA [Reserved]
11.10 Clerks.
11.11 Records.
11.12 Copies of laws.
11.13 Complaints.
11.14 Warrants to apprehend.
11.15 Arrests.
11.16 Search warrants.
11.17 Commitments.
11.18 Bail or bond.
11.19 Definition of signature.
11.20 Definition of tribal council.
11.20C Definition of tribal council.
11.21 Cooperation by Federal employees.

Civil Actions

11.22 Jurisdiction.
11.22C Jurisdiction.
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11.23 Law applicable to civil actions.
11.24 Judgments in civil actions.
11.24C Judgments in civil actions.
11.24CA [Reserved]
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11.25CA [Reserved]
11.26 Payment of judgments from individual Indian moneys.
11.26C Payment of judgments from individual Indian moneys.

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11.28 Tribal custom marriage and divorce.
11.28CA [Reserved]
11.29 Tribal custom adoption.
11.29C Adoption.
11.30 Determination of paternity and support.
11.30CA [Reserved]
11.31 Determination of heirs.
11.31C Determination of heirs.
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11.32 Approval of wills.
11.32C Approval of wills.

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11.33 Nature of sentences.
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11.34 Probation.
11.34C Probation.
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11.36 Juvenile delinquency.
11.36C Juvenile delinquency.
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11.37CA [Reserved]

Code Of Indian Tribal Offenses

11.38 Assault.
11.39 Assault and battery.
11.40 Carrying concealed weapons.
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11.42 Theft.
11.43 Embezzlement.
11.44 Fraud.
11.45 Forgery.
11.46 Misbranding.
11.47 Receiving stolen property.
11.48 Extortion.
11.49 Disorderly conduct.
11.49CA [Reserved]
11.50 Reckless driving.
11.50C Reckless driving.
11.50ME Traffic violations.
11.51 Malicious mischief.
11.52 Trespass.
11.52CA [Reserved]
11.53 Injury to public property.
11.53CA [Reserved]
11.54 Maintaining a public nuisance.
11.55 Liquor violations.
11.55ME Liquor Violations.
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11.63C Giving venereal disease to another.
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11.64C Failure to support dependent persons.
11.65 Failure to send children to school.
11.66 Contributing to the delinquency of a minor.
11.67 Bribery.
11.68 Perjury.
11.69 False arrest.
11.70 Resisting lawful arrest.

Sec.
11.70 ME Resisting or obstructing officers.
11.71 Refusing to aid officer.
11.72 Escape.
11.73 Disobedience to lawful orders of court.
11.74 Violation of an approved tribal ordinance.
11.75C Limitation on filing of complaints.
11.75CA—11.76CA [Reserved]
11.76H Failure to sell or remove from tribal range infectious or cull animals.
11.77H Introduction of livestock without permit.
11.78H Stock trespass in form of unauthorized use of range.
11.79H Failure to dip sheep.
11.80H Making false reports of stock owned.
11.81H Unauthorized fencing of tribal land.
11.82H Inter-district trespass.
11.83H Grazing stock without permit.
11.84H Refusing to brand or mark livestock.
11.85H Obstructing or interfering with livestock roundups.
11.86H Trespass on areas reserved for demonstration purposes.
11.87H Peyote violations.
11.88ME Curfew.
11.89ME Firearms.
11.90ME Keeping of livestock.
11.91ME Control of dogs.
11.92ME Forest fine protection.
11.93ME Possession of controlled substances.
11.94ME Garbage and rubbish.
11.95ME Extradition.
11.96ME Breaking and entering.
11.97ME Juvenile services.
11.98ME Date of incorporated statutes.

THE INDIAN POLICE

11.301 Superintendent in command.
11.302 Police commissioners.
11.303 Police training.
11.304 Minimum standards for police programs.
11.305 Minimum standards for detention programs.
11.306 Return of equipment.

AUTHORITY: R.S. 463; 25 U.S.C. 2. Interpret or apply sec. 1, 38 Stat. 586; 25 U.S.C. 200, unless otherwise noted.

SOURCE: 22 FR 10515, Dec. 24, 1957, unless otherwise noted.

NOTE: The regulations in this part are applicable on Indian reservations subject to the provisions of § 11.1, and the following exceptions:

§§ 11.6, 11.7, 11.20, 11.22, 11.24, 11.26, 11.28, 11.29, 11.31, 11.32, 11.34, 11.36, 11.50, 11.63, and 11.64, not applicable to Crow Indians.

§§ 11.6C, 11.7C, 11.20C, 11.22C, 11.24C, 11.26C, 11.29C, 11.31C, 11.32C, 11.34C, 11.36C, 11.50C, 11.60C, 11.63C, 11.64C, and 11.75C, applicable only to Crow Indians.

§§ 11.76H to 11.87H, inclusive, applicable only to Hopi Indians.

§§ 11.1, 11.2, 11.3, 11.5, 11.6, 11.6C, 11.7, 11.7C, 11.8, 11.20C, 11.22, 11.22C, 11.24, 11.24C, 11.25, 11.26C, 11.28, 11.29, 11.29C, 11.30, 11.31, 11.31C, 11.32, 11.32C, 11.33, 11.34C, 11.36C, 11.37, 11.49, 11.50C, 11.52, 11.53, 11.57, 11.58, 11.60C, 11.63, 11.63C, 11.64C, 11.74, 11.75C, and 11.76H-11.87H, inclusive, are not applicable to Coeur d'Alene Indians.

All sections in Part 11 not heretofore mentioned in this note are applicable to the Coeur d'Alene Indians.

NOMENCLATURE CHANGES: 38 FR 10927, May 3, 1973.

APPLICATION; JURISDICTION

§ 11.1 Application of regulations.

(a) Except as otherwise provided in this part, 11.1-11.87 of this part apply to the following Indian reservations:

(1) Omaha (Nebraska).
(2) Flandreau (South Dakota).
(3) Yankton (South Dakota).
(4) Wind River (Wyoming).
(5) Menominee (Wisconsin).
(6) Isabella (Michigan).
(7) Sault Ste. Marie (Michigan).
(8) Boise Forte (Minnesota).
(9) Choctaw (Mississippi).
(10) Cocopah (Arizona).
(11) Fort Mojave (Arizona).
(12) Kaibab (Arizona).
(13) Yavapai-Prescott (Arizona).
(14) Fallon (Nevada).
(15) Goshute (Nevada).
(16) Lovelock (Nevada).
(17) Reno Sparks (Nevada).
(18) Te-Moak (Nevada).
(19) Walker River (Nevada).
(20) Washoe (Nevada).
(21) Winnemucca (Nevada).
(22) Yomba (Nevada).
(23) Kootenai (Idaho).
(24) Shoalwater Bay (Washington).
(25) Hopi (Arizona) (Tribal court enforcement of special grazing regulations).
(26) Hoopa (California) (Jurisdiction limited to special fishing regulations).
(27) Duckwater Shoshone (Nevada).
(28) Eastern Cherokee (North Carolina)
(29) Anadarko Area tribes (Western Oklahoma)

(b) It is the purpose of the regulations in this part to provide adequate machinery of law enforcement for those Indian tribes in which traditional agencies for the enforcement of tribal law and custom have broken down for which no adequate substitute has been provided under Federal or State law.

(c) No court of Indian Offenses will be established on reservations where justice is effectively administered under State laws and by State law enforcement agencies.

(d) The regulations in this part shall continue to apply to tribes organized under the act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461-479), until a law and order code has been adopted by the tribe in accordance with its constitution and by-laws and has become effective; and thereafter §§ 11.3, 11.4, 11.301, 11.302, 11.303, 11.304, 11.305 and 11.306 shall continue in effect as long as the Indian judges and Indian police are paid from appropriations made by the United States or until otherwise directed.

(e) Nothing in this section shall prevent the adoption by the tribal council of ordinances applicable to the individual tribe, and after such ordinances have been approved by the Secretary of the Interior they shall be controlling, and the regulations of this part which may be inconsistent therewith shall no longer be applicable to that tribe.

(5 U.S.C. 301 and 25 U.S.C. 2)

[22 FR 10515, Dec. 24, 1957, as amended at 43 FR 49982, Oct. 26, 1978; 44 FR 18969, Mar. 30, 1979; 44 FR 37503, June 27, 1979]

§ 11.2 Jurisdiction.

(a) A Court of Indian Offenses shall have jurisdiction over all offenses enumerated in §§ 11.38-11.87H, when committed by any Indian, within the reservation or reservations for which the court is established, provided that such court on the Hopi Reservation shall also have jurisdiction to enforce against members of the tribe within the Hopi Reservation the ordinances passed by the Hopi tribal council which prohibit offenses against the peace and welfare of the tribe committed by such members off the reservation.

(b) With respect to any of the offenses enumerated in §§ 11.38-11.87H, over which Federal or State courts may have lawful jurisdiction, the jurisdiction of the Court of Indian Offenses shall be concurrent and not exclusive. It shall be the duty of the said Court of Indian Offenses to order delivery to the proper authorities of the State or Federal Government or of any other tribe or reservation, for prosecution, any offender, there to be dealt with according to law or regulations authorized by law, where such authorities consent to exercise jurisdiction lawfully vested in them over the said offender.

(c) For the purpose of the enforcement of the regulations in this part, an Indian shall be deemed to be any person of Indian descent who is a member of any recognized Indian tribe now under Federal jurisdiction and a "reservation" shall be taken to include all territory within reservation boundaries, including fee patented lands, roads, waters, bridges, and lands used for agency purposes.

(d) All Indians employed in the Indian Service shall be subject to the jurisdiction of the Court of Indian Offenses but any such employee appointed by the Secretary of the Interior shall not be subject to any sentence of such court, unless such sentence shall have been approved by the Secretary of the Interior.

Courts of Indian Offenses

§ 11.2CA [Reserved]

§ 11.3 Judges.

(a) A Court of Indian Offenses established for any reservation or group of reservations shall consist of one or more chief judges, whose duties shall be regular and permanent, and two or more associate judges, who may be called to service when occasion requires, and who shall be compensated on a per diem basis.

(b) Each judge shall be appointed by the Commissioner of Indian Affairs, subject to confirmation by a two-thirds vote of the tribal council.

(c) Each judge shall hold office for a period of 4 years, unless sooner removed for cause or by reason of the

abolition of the said office, but shall be eligible for reappointment.

(d) A person shall be eligible to serve as judge of a Court of Indian Offenses only if he (1) is a member of a tribe under the jurisdiction of the said court; and (2) has never been convicted of a felony, or, within 1 year then last past, of a misdemeanor.

(e) No judge shall be qualified to act as such in any case wherein he has any direct interest or wherein any relative by marriage or blood, in the first or second degrees, is a party.

(f) On any reservation where no permanent Court of Indian Offenses has been established under this section, a provisional court may be established, with powers equal to those of a permanent court. Such court shall be established by detailing a judge from another reservation, upon request of the tribal council of the reservation desiring his services. Such detail shall be made by the superintendent of the reservation where the judge regularly presides: *Provided*, That where the judge to be detailed is paid from tribal funds the consent of the tribal council of such tribe shall be obtained for the detail. No detail shall extend beyond 1 year, but any detail may be renewed for additional periods unless such renewal is disapproved by the tribal council which requested or approved the detail.

§ 11.3CA [Reserved]

§ 11.4 Removal of judges.

Any judge of the Court of Indian Offenses may be suspended, dismissed or removed, by the Commissioner of Indian Affairs, for cause, upon the recommendation of the tribal council.

§ 11.5 Court procedure.

(a) Sessions of the Court of Indian Offenses for the trial of cases shall be held by the chief judge, or, in case of his disability, by one of the associate judges selected for the occasion by all of the judges.

(b) The time and place of court sessions, and all other details of judicial procedure not prescribed by the regulations in this part, shall be laid down in rules of court approved by the tribal council and by the superintendent of the reservation.

(c) It shall be the duty of the judges of each Court of Indian Offenses to make recommendations to the tribal council for the enactment or amendment of such rules of court in the interests of improved judicial procedure.

§ 11.5CA [Reserved]

§ 11.6 Appellate proceedings.

All the judges of the reservation shall sit together, at such times and at such places as they may find proper and necessary for the dispatch of business, to hear appeals from judgments made by any judge at the trial sessions. There shall be established by rule of court the limitations, if any, to be placed upon the right of appeal both as to the types of cases which may be appealed and as to the manner in which appeals may be granted according to the needs of their jurisdiction. In the absence of such rule of court any party aggrieved by a judgment may appeal to the full court upon giving notice of such appeal at the time of judgment and upon giving proper assurance to the trial judge, through the posting of a bond or in any other manner, that he will satisfy the judgment if it is affirmed. In any case where a party has perfected his right to appeal as established herein or by rule of court, the judgment of the trial judge shall not be executed until after final disposition of the case by the full court. The full court may render judgment upon the case by majority vote.

§ 11.6C Appellate proceedings.

All the judges of the reservation, except the trial judge, shall sit together, at such times and at such places as they may find proper and necessary for the dispatch of business, to hear appeals from judgments made by any judge at the trial sessions, and such tribunal shall be known as the Crow Tribal Court of Appeals. There shall be established by rule of court the limitations, if any, to be placed upon the right of appeal both as to the types of cases which may be appealed and as to the manner in which appeals may be granted, according to the

needs of their jurisdiction. In the absence of such rule of court any party aggrieved by a judgment may appeal to the full court upon giving notice of such appeal at the time of judgment and upon giving proper assurance to the trial judge, through the posting of a bond or in any other manner, that he will satisfy the judgment if it is affirmed. In any case where a party has perfected his right to appeal as established in this section or by rule of court, the judgment of the trial judge shall not be executed until after final disposition of the case by the full court. The full court may render judgment upon the case by majority vote.

§ 11.6CA [Reserved]

§ 11.7 Juries.

(a) In any case where, upon preliminary hearing by the court, a substantial question of fact is raised, the defendant may demand a jury trial.

(b) A list of eligible jurors shall be prepared by the tribal council each year.

(c) In any case, a jury shall consist of six residents of the vicinity in which the trial is held, selected from the list of eligible jurors by the judge. Any party to the case may challenge not more than three members of the jury panel so chosen.

(d) The judge shall instruct the jury in the law governing the case and the jury shall bring a verdict for the complainant or the defendant. The judge shall render judgment in accordance with the verdict and existing law. If the jury is unable to reach a unanimous verdict, verdict may be rendered by a majority vote.

(e) Each juror who serves upon a jury shall be entitled to a fee not less than the hourly minimum wage scale established by 29 U.S.C. 206(a)(1), and any of its subsequent revisions, plus fifteen cents per mile travel costs. Each juror shall receive pay for a full day (8 hours) for any portion of a day served, plus travel allowance.

[22 FR 10515, Dec. 24, 1957, as amended at 41 FR 5280, Feb. 5, 1976]

§ 11.7C Juries.

(a) In any case where, upon preliminary hearing by the court, a substantial question of fact is raised, the defendant may demand a jury trial.

(b) A list of eligible jurors shall be prepared by the tribal council each year.

(c) In any case, a jury shall be drawn from the list of eligible jurors by the judge. Any party to the case may challenge not more than three members of the jury panel so chosen.

(d) The judge shall instruct the jury in the law governing the case and the jury shall bring a verdict for the complainant or the defendant. The judge shall render judgment in accordance with the verdict and existing law. If the jury is unable to reach a unanimous verdict, the verdict may be rendered by a two-thirds majority vote.

(e) Each juror who serves upon a jury shall be entitled to a fee not less than the hourly minimum wage scale established by 29 U.S.C. 206(a)(1), and any of its subsequent revisions, plus fifteen cents per mile travel costs. Each juror shall receive pay for a full day (8 hours) for any portion of a day served, plus travel allowance.

[22 FR 10515, Dec. 24, 1957, as amended at 41 FR 5280, Feb. 5, 1976]

§ 11.8 Witnesses.

(a) The several judges of the Courts of Indian Offenses shall have the power to issue subpenas for the attendance of witnesses either on their own motion or on the request of the police commissioner or superintendent or any of the parties to the case, which subpena shall bear the signature of the judge issuing it. Each witness answering such subpena shall be entitled to a fee not less than the hourly minimum wage scale established by 29 U.S.C. 206(a)(1) and any of its subsequent revisions, plus actual cost of travel. Each witness testifying at a hearing shall receive pay for a full day (8 hours), plus travel allowance. Failure to obey such subpena shall be deemed an offense as provided in § 11.73. Service of such subpenas shall be by a regularly acting member of the Indian police or by an Indian appointed by the court for that purpose.

(b) Witnesses who testify voluntarily shall be paid by the party calling them if the court so directs, their actual

traveling and living expenses incurred in the performance of their function.

[22 FR 10515, Dec. 24, 1957, as amended at 41 FR 5280, Feb. 5, 1976]

§ 11.8CA [Reserved]

§ 11.10 Clerks.

The superintendent shall detail a clerk of court for each Court of Indian Offenses. The clerk of the Court of Indian Offenses shall render assistance to the court, to the police force of the reservation and to individual members of the tribe in the drafting of complaints, subpenas, warrants and commitments and any other documents incidental to the lawful functions of the court. It shall be the further duty of said clerk to attend and to keep a written record of all proceedings of the court, to administer oaths to witnesses, to collect all fines paid and to pay out all fees authorized by the regulations in this part, and to make an accounting thereof to the disbursing agent of the reservation and to the tribal council.

§ 11.11 Records.

Each Court of Indian Offenses shall be required to keep, for inspection by duly qualified officials, a record of all proceedings of the court, which record shall reflect the title of the case, the names of the parties, the substance of the complaint, the names and addresses of all witnesses, the date of the hearing or trial, by whom conducted, the findings of the court or jury, and the judgment, together with any other facts or circumstances deemed of importance to the case. A record of all proceedings shall be kept at the agency office, as required by 25 U.S.C. 200.

§ 11.12 Copies of laws.

(a) Each Court of Indian Offenses shall be provided with copies of all Federal and State laws and regulations of the Bureau of Indian Affairs applicable to the conduct of Indians within the reservation.

(b) Whenever the court is in doubt as to the meaning of any law, treaty or regulation it may request the superintendent to furnish an opinion on the point in question.

§ 11.13 Complaints.

No complaint filed in any Court of Indian Offenses shall be valid unless it shall bear the signature of the complainant or complaining witness, witnessed by a duly qualified judge of the Court of Indian Offenses or by the superintendent or by any other qualified employee of such reservation.

§ 11.14 Warrants to apprehend.

Every judge of a Court of Indian Offenses shall have the authority to issue warrants to apprehend, said warrants to issue in the discretion of the court only after a written complaint shall have been filed, bearing the signature of the complaining witness. Service of such warrants shall be made by a duly qualified member of the Indian police or other police officer of the United States Indian Service. No warrant to apprehend shall be valid unless it shall bear the signature of a duly qualified judge of the Court of Indian Offenses.

§ 11.15 Arrests.

No member of the Indian police shall arrest any person for any offense defined by §§ 11.38–11.87H or by Federal law, except when such offense shall occur in the presence of the arresting officer or he shall have reasonable evidence that the person arrested has committed an offense or the officer shall have a warrant commanding him to apprehend such person.

§ 11.16 Search warrants.

(a) Every judge of the Court of Indian Offenses of any Indian reservation shall have authority to issue warrants for search and seizure of the premises and property of any person under the jurisdiction of said court. However, no warrant of search and seizure shall issue except upon a duly signed and written complaint based upon reliable information or belief and charging the commission of some offense against the tribe. No warrant for search and seizure shall be valid unless it contains the name or description of the person or property to be searched and describes the articles or property to be seized and bears the signature of a duly qualified judge of the Court of Indian Offenses. Service

of warrants of search and seizure shall be made only by members of the Indian police or police officers of the Bureau of Indian Affairs.

(b) No policeman shall search or seize any property without a warrant unless he shall know, or have reasonable cause to believe, that the person in possession of such property is engaged in the commission of an offense under the regulations in this part. Unlawful search or seizure will be deemed trespass and punished in accordance with § 11.52.

§ 11.17 Commitments.

No Indian shall be detained, jailed or imprisoned under the regulations in this part for a longer period than 36 hours unless there be issued a commitment bearing the signature of a duly qualified judge of the Court of Indian Offenses. There shall be issued, for each Indian held for trial, a temporary commitment and for each Indian held after sentence a final commitment on the prescribed forms.[1]

§ 11.18 Bail or bond.

Every Indian charged with an offense before any Court of Indian Offenses may be admitted to bail. Bail shall be by two reliable members of any Indian tribe who shall appear before a judge of the Court of Indian Offenses where complaint has been filed and there execute an agreement in compliance with the form provided therefor and made a part of the regulations in this part. In no case shall the penalty specified in the agreement exceed twice the maximum penalty set by §§ 11.38–11.87H for violation of the offense with which the accused is charged.

§ 11.19 Definition of signature.

The term "signature" as used in the regulations in this part shall be defined as the written signature, official seal, or the witnessed thumb print or mark of any individual.

[1]Forms may be obtained from the Commissioner of Indian Affairs, Washington, D.C.

§ 11.20 Definition of tribal council.

The term "tribal council," as used in the regulations in this part, shall be construed to refer to the council, business committee or other organization recognized by the Department of the Interior as representing the tribe, or where no such body is recognized, to the adult members of the tribe in council assembled.

§ 11.20C Definition of tribal council.

The term "tribal council," as used in the regulations in this part, shall be construed to refer to the Crow tribal council.

§ 11.21 Cooperation by Federal employees.

(a) No field employee of the Indian Service shall obstruct, interfere with or control the functions of any Court of Indian Offenses, or influence such functions in any manner except as permitted by the regulations in this part or in response to a request for advice or information from the court.

(b) Employees of the Bureau of Indian Affairs, particularly those who are engaged in social service, health and educational work, shall assist the court, upon its request, in the preparation and presentation of the facts in the case and in the proper treatment of individual offenders.

Civil Actions

§ 11.22 Jurisdiction.

The Court of Indian Offenses shall have jurisdiction of all suits wherein the defendant is a member of the tribe or tribes within their jurisdiction, and of all other suits between members and nonmembers which are brought before the courts by stipulation of both parties. No judgment shall be given on any suit unless the defendant has actually received notice of such suit and ample opportunity to appear in court in his defense. Evidence of the receipt of the notice shall be kept as part of the record in the case. In all civil suits the complainant may be required to deposit with the clerk of the court a fee or other security in a reasonable amount to cover costs and disbursements in the case.

§ 11.22C Jurisdiction.

The Court of Indian Offenses shall have jurisdiction of all suits wherein the parties to the action are members of the tribe or tribes within their jurisdiction, and of all other suits between members and nonmembers which are brought before the courts by stipulation of both parties. No judgment shall be given on any suit unless the defendant has actually received notice of such suit and ample opportunity to appear in court in his defense. Evidence of the receipt of the notice shall be kept as part of the record in the case. In all civil suits the complainant may be required to deposit with the clerk of the court a fee or other security in a reasonable amount to cover costs and disbursements in the case.

§ 11.22CA [Reserved]

§ 11.23 Law applicable to civil actions.

(a) In all civil cases the Court of Indian Offenses shall apply any laws of the United States that may be applicable, any authorized regulations of the Interior Department, and any ordinances or customs of the tribe, not prohibited by such Federal laws.

(b) Where any doubt arises as to the customs and usages of the tribe the court may request the advice of counsellors familiar with these customs and usages.

(c) Any matters that are not covered by the traditional customs and usages of the tribe, or by applicable Federal laws and regulations, shall be decided by the Court of Indian Offenses according to the laws of the State in which the matter in dispute may lie.

§ 11.24 Judgments in civil actions.

(a) In all civil cases, judgment shall consist of an order of the court awarding money damages to be paid to the injured party, or directing the surrender of certain property to the injured party, or the performance of some other act for the benefit of the injured party.

(b) Where the injury inflicted was the result of carelessness of the defendant, the judgment shall fairly compensate the injured party for the loss he has suffered.

(c) Where the injury was deliberately inflicted, the judgment shall impose an additional penalty upon the defendant, which additional penalty may run either in favor of the injured party or in favor of the tribe.

(d) Where the injury was inflicted as the result of accident, or where both the complainant and the defendant were at fault, the judgment shall compensate the injured party for a reasonable part of the loss he has suffered.

§ 11.24C Judgments in civil actions.

(a) In all civil cases, judgment shall consist of an order of the court awarding money damages to be paid to the injured party, or directing the surrender of certain property to the injured party, or the performance of some other act for the benefit of the injured party.

(b) Where the injury inflicted was the result of carelessness of the defendant, the judgment shall fairly compensate the injured party for the loss he has suffered.

(c) Where the injury was deliberately inflicted, the judgment shall impose an additional penalty upon the defendant, which additional penalty may run either in favor of the injured party or in favor of the tribe.

(d) Where the injury was inflicted as the result of accident, or where both the complainant and the defendant were at fault, the judgment may compensate the injured party for a reasonable part of the loss he has suffered.

§ 11.24CA [Reserved]

§ 11.25 Costs in civil actions.

The court may assess the accruing costs of the case against the party or parties against whom judgment is given. Such costs shall consist of the expenses of voluntary witnesses for which either party may be responsible under § 11.8 and the fees of jurors in those cases where a jury trial is had, and any further incidental expenses connected with the procedure before the court as the court may direct.

§ 11.25CA [Reserved]

§ 11.26 Payment of judgments from individual Indian moneys.

(a) Whenever the Court of Indian Offenses shall have ordered payment of money damages to an injured party and the losing party refuses to make such payment within the time set for payment by the court, and when the losing party has sufficient funds to his credit at the agency office to pay all or part of such judgment, the superintendent shall certify to the Secretary of the Interior the record of the case and the amount of the available funds. If the Secretary shall so direct, the disbursing agent shall pay over to the injured party the amount of the judgment, or such lesser amount as may be specified by the Secretary, from the account of the delinquent party.

(b) A judgment shall be considered a lawful debt in all proceedings held by the Department of the Interior or by the Court of Indian Offenses to distribute decedents' estates.

CROSS REFERENCE: For individual Indian money regulations, see Part 104 of this chapter.

§ 11.26C Payment of judgments from individual Indian moneys.

(a) Whenever the Court of Indian Offenses shall have ordered payment of money damages to an injured party and the losing party refuses to make such payment within the time set for payment by the court, and when the losing party has sufficient funds to his credit at the agency office to pay all or part of such judgment, the superintendent shall certify to the Secretary of the Interior the record of the case and the amount of the available funds. If the Secretary shall so direct, the disbursing agent shall pay over to the injured party the amount of the judgment, or such lesser amount as may be specified by the Secretary, from the account of the delinquent party.

(b) A judgment shall be considered a lawful debt in all proceedings held by the Department of the Interior or by the Court of Indian Offenses to distribute decedents' estates.

(c) No recovery may be had after 5 years from date of final judgment in any suit unless such judgment shall have been renewed before date of expiration.

CROSS REFERENCE: For individual Indian money regulations, see Part 104 of this chapter.

DOMESTIC RELATIONS

§ 11.27 Recording of marriages and divorces.

All Indian marriages and divorces, whether consummated in accordance with the State law or in accordance with tribal custom, shall be recorded within 3 months at the agency of the jurisdiction in which either or both of the parties reside.

§ 11.28 Tribal custom marriage and divorce.

(a) The Tribal council shall have authority to determine whether Indian custom marriage and Indian custom divorce for members of the tribe shall be recognized in the future as lawful marriage and divorce upon the reservation, and if it shall be so recognized, to determine what shall constitute such marriage and divorce and whether action by the Court of Indian Offenses shall be required. When so determined in writing, one copy shall be filed with the Court of Indian Offenses, one copy with the superintendent in charge of the reservation, and one copy with the Commissioner of Indian Affairs. Thereafter Indians who desire to become married or divorced by the custom of the tribe shall conform to the custom of the tribe as determined. Indians who assume or claim a divorce by Indian custom shall not be entitled to remarry until they have complied with the determined custom of their tribe nor until they have recorded such divorce at the agency office.

(b) Pending any determination by the tribal council on these matters, the validity of Indian custom marriage and divorce shall continue to be recognized as heretofore.

§ 11.28CA [Reserved]

§ 11.29 Tribal custom adoption.

The tribal council shall likewise have authority to determine whether Indian custom adoption shall be permitted upon the reservation among

members of the tribe, and if permitted, to determine what shall constitute such adoption and whether action by the Court of Indian Offenses shall be required. The determination of the tribal council shall be filed with the Court of Indian Offenses, with the superintendent of the reservation and with the Commissioner of Indian Affairs. Thereafter all members of the tribe desiring to adopt any person shall conform to the procedure fixed by the tribal council.

§ 11.29C Adoption.

No future adoptions among or by the Crow Indians shall be recognized except those made in accordance with the act of March 3, 1931 (46 Stat. 1494).

§ 11.30 Determination of paternity and support.

The Court of Indian Offenses shall have jurisdiction of all suits brought to determine the paternity of a child and to obtain a judgment for the support of the child. A judgment of the court establishing the identity of the father of the child shall be conclusive of that fact in all subsequent determinations of inheritance by the Department of the Interior or by the Court of Indian Offenses.

§ 11.30CA [Reserved]

§ 11.31 Determination of heirs.

(a) When any member of the tribe dies leaving property other than an allotment or other trust property subject to the jurisdiction of the United States, any member claiming to be an heir of the decedent may bring a suit in the Court of Indian Offenses to have the court determine the heirs of the decedent and to divide among the heirs such property of the decedent. No determination of heirs shall be made unless all the possible heirs known to the court, to the superintendent, and to the claimant have been notified of the suit and given full opportunity to come before the court and defend their interests. Possible heirs who are not residents of the reservation under the jurisdiction of the court must be notified by mail and a copy of the notice must be preserved in the record of the case.

(b) In the determination of heirs the court shall apply the custom of the tribe as to inheritance if such custom is proved. Otherwise the court shall apply State law in deciding what relatives of the decedent are entitled to be his heirs.

(c) Where the estate of the decedent includes any interest in restricted allotted lands or other property held in trust by the United States, over which the administrative law judge would have jurisdiction, the Court of Indian Offenses may distribute only such property as does not come under the jurisdiction of the administrative law judge, and the determination of heirs by the court may be reviewed, on appeal, and the judgment of the court modified or set aside by the said administrative law judge, with the approval of the Secretary of the Interior, if law and justice so require.

CROSS REFERENCE: For regulations governing the jurisdiction of the administrative law judge concerning the determination of heirs, see Part 15 of this chapter.

§ 11.31C Determination of heirs.

The superintendent of the Crow Reservation shall have authority to protect, impound or convert into cash, for the benefit of the estate, any personal property which may be left by any decedent who is an enrolled member of the Crow Tribe, pending final determination of the heirs of said decedent by the Secretary of the Interior, and in accordance with existing law and regulations.

§ 11.31 [Reserved]

§ 11.32 Approval of wills.

When any member of the tribe dies, leaving a will disposing only of property other than an allotment or other trust property subject to the jurisdiction of the United States, the Court of Indian Offenses shall, at the request of any member of the tribe named in the will or any other interested party, determine the validity of the will after giving notice and full opportunity to appear in court to all persons who might be heirs of the decedent, as under § 11.31. A will shall be deemed

to be valid if the decedent had a sane mind and understood what he was doing when he made the will and was not subject to any undue influence of any kind from another perons, and if the will was made in accordance with a proved tribal custom or made in writing and signed by the decedent in the presence of two witnesses who also sign the will. If the court determines the will to be validly executed, it shall order the property described in the will to be given to the persons named in the will or to their heirs; but no distribution of property shall be made in violation of a proved tribal custom which restricts the privilege of tribal members to distribute property by will.

CROSS REFERENCE: For regulations governing the jurisdiction of the administrative law judge concerning the approval of wills, heirs, see Part 15 of this chapter.

§ 11.32C Approval of wills.

The determination of the validity of wills shall be made by the Secretary of the Interior as provided in Part 15 of this chapter.

SENTENCES

§ 11.33 Nature of sentences.

(a) Any Indian who has been convicted by the Court of Indian Offenses of violation of a provision of §§ 11.38–11.84H shall be sentenced by the court to work for the benefit of the tribe for any period found by the court to be appropriate; but the period fixed shall not exceed the maximum period set for the offense in the code, and shall begin to run from the day of the sentence. During the period of sentence the convicted Indian may be confined in the agency jail if so directed by the court. The work shall be done under the supervision of the superintendent or an authorized agent or committee of the tribal council as the court may provide.

(b) Whenever any convicted Indian shall be unable or unwilling to work, the court shall, in its discretion, sentence him to imprisonment for the period of the sentence or to pay a fine equal to $2 a day for the same period. Such fine shall be paid in cash, or in commodities or other personal property of the required value as may be directed by the court. Upon the request of the convicted Indian, the disbursing agent may approve a disbursement voucher chargeable to the Indian's account to cover payment of the fine imposed by the court.

(c) In addition to any other sentence, the court may require an offender who has inflicted injury upon the person or property of any individual to make restitution or to compensate the party injured, through the surrender of property, the payment of money damages, or the performance of any other act for the benefit of the injured party.

(d) In determining the character and duration of the sentence which shall be imposed, the court shall take into consideration the previous conduct of the defendant, the circumstances under which the offense was committed, and whether the offense was malicious or willful and whether the offender has attempted to make amends, and shall give due consideration to the extent of the defendant's resources and the needs of his dependents. The penalties listed in §§ 11.38–11.87H are maximum penalties to be inflicted only in extreme cases.

§ 11.33CA [Reserved]

§ 11.34 Probation.

(a) Where sentence has been imposed upon any Indian who has not previously been convicted of any offense, the Court of Indian Offenses may in its discretion suspend the sentence imposed and allow the offender his freedom on probation upon his signing a pledge of good conduct during the period of the sentence upon the form provided therefor.

(b) Any Indian who shall violate his probation pledge shall be required to serve the original sentence plus an additional half of such sentence as penalty for the violation of his pledge.

§ 11.34C Probation.

(a) Where sentence has been imposed upon any Indian, the Court of Indian Offenses may in its discretion suspend the sentence imposed and allow the offender his freedom on probation, upon his signing a pledge of

good conduct during the period of the sentence.

(b) Any Indian who shall violate his probation pledge shall be required to serve the original sentence plus an additional half of such sentence as penalty for the violation of his pledge.

§ 11.35 Parole.

(a) Any Indian committed by a Court of Indian Offenses who shall have without misconduct served one-half the sentence imposed by such court shall be eligible to parole. Parole shall be granted only by a judge of the Court of Indian Offenses where the prisoner was convicted and upon the signing of the form provided therefor.

(b) Any Indian who shall violate any of the provisions of such parole shall be punished by being required to serve the whole of the original sentence.

§ 11.36 Juvenile delinquency.

Whenever any Indian who is under the age of 18 years is accused of committing one of the offenses enumerated in §§ 11.38-11.87H, the judge may in his discretion hear and determine the case in private and in an informal manner, and, if the accused is found to be guilty, may in lieu of sentence place such delinquent for a designated period under the supervision of a responsible person selected by him or may take such other action as he may deem advisable in the circumstances.

§ 11.36C Juvenile delinquency.

(a) Whenever any Indian who is under the age of 18 years is accused of committing one of the offenses enumerated in §§ 11.38-11.12.175C, the judge may in his discretion hear and determine the case in private and in an informal manner, and, if the accused is found to be guilty, may in lieu of sentence, place such delinquent for a designated period under the supervision of a responsible person selected by him or may take such other action as he may deem advisable in the circumstances.

(b) In the absence of either parent or guardian, the court shall appoint a suitable person to represent the delinquent child.

§ 11.37 Disposition of fines.

(a) All money fines imposed for the commission of an offense shall be in the nature of an assessment for the payment of designated court expenses. Such expenses shall include the payment of the fees provided for in the regulations in this part to jurors and to witnesses answering a subpena. The fines assessed shall be paid over by the clerk of the court to the disbursing agent of the reservation for deposit as a "special deposit, court funds" to the disbursing agent's official credit in the Treasury of the United States. The disbursing agent shall withdraw such funds, in accordance with existing regulations, upon the order of the clerk of the court signed by a judge of the court for the payment of specified fees to specified jurors or witnesses. The disburising agent and the clerk of the court shall keep an accounting of all such deposits and withdrawals for the inspection of any person interested. Whenever such fund shall exceed the amount necessary with a reasonable reserve for the payment of the court expenses before mentioned, the tribal council shall designate, with the approval of the superintendent, further expenses of the work of the court which shall be paid by these funds, such as the writing of records, the costs of notices or the increase of fees, whether or not any such costs were previously paid from other sources.

(b) Wherever a fine is paid in commodities, the commodities shall be turned over under the supervision of the clerk of the court to the custody of the superintendent to be sold or, if the tribal council so directs, to be disposed of in other ways for the benefit of the tribe. The proceeds of any sale of such commodities shall be deposited by the disbursing agent in the special deposit for court funds and recorded upon the accounts.

11.37CA [Reserved]

CODE OF INDIAN TRIBAL OFFENSES

§ 11.38 Assault.

Any Indian who shall attempt or threaten bodily harm to another person through unlawful force or violence shall be deemed guilty of as-

sault, and upon conviction thereof shall be sentenced to labor for a period not to exceed 5 days or shall be required to furnish a satisfactory bond to keep the peace.

§ 11.39 Assault and battery.

Any Indian who shall willfully strike another person or otherwise inflict bodily injury, or who shall by offering bodily injury, or who shall by offering violence cause another to harm himself shall be deemed guilty of assault and battery and upon conviction thereof shall be sentenced to labor for a period not to exceed 6 months.

§ 11.40 Carrying concealed weapons.

Any Indian who shall go about in public places armed with a dangerous weapon concealed upon his person, unless he shall have a permit signed by a judge of a Court of Indian Offenses and countersigned by the superintendent of the reservation, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 30 days; and the weapons so carried may be confiscated.

§ 11.41 Abduction.

Any Indian who shall willfully take away or detain another person against his will or without the consent of the parent or other person having lawful care or charge of him, shall be deemed guilty of abduction and upon conviction thereof shall be sentenced to labor for a period not to exceed 6 months.

§ 11.42 Theft.

Any Indian who shall take the property of another person, with intent to steal, shall be deemed guilty of theft and upon conviction thereof shall be sentenced to labor for a period not to exceed 6 months.

§ 11.43 Embezzlement.

Any Indian who shall, having lawful custody of property not his own, appropriate the same to his own use with intent to deprive the owner thereof, shall be deemed guilty of embezzlement and upon conviction thereof shall be sentenced to labor for a period not to exceed 6 months.

§ 11.44 Fraud.

Any Indian who shall by willful misrepresentation or deceit, or by false interpreting, or by the use of false weights or measures obtain any money or other property, shall be deemed guilty of fraud and upon conviction thereof shall be sentenced to labor for a period not to exceed 6 months.

§ 11.45 Forgery.

Any Indian who shall, with intent to defraud, falsely sign, execute or alter any written instrument, shall be deemed guilty of forgery and upon conviction thereof shall be sentenced to labor for a period not to exceed 6 months.

§ 11.46 Misbranding.

Any Indian who shall knowingly and willfully misbrand or alter any brand or mark on any livestock of another person, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 6 months.

§ 11.47 Receiving stolen property.

Any Indian who shall receive or conceal or aid on concealing or receiving any property, knowing the same to be stolen, embezzled, or obtained by fraud or false pretense, robbery or burglary, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 3 months.

§ 11.48 Extortion.

Any Indian who shall willfully, by making false charges against another person or by any other means whatsoever, extort or attempt to extort any moneys, goods, property, or anything else of any value, shall be deemed guilty of extortion and upon conviction thereof shall be sentenced to labor for a period not to exceed 30 days.

§ 11.49 Disorderly conduct.

Any Indian who shall engage in fighting in a public place, disturb or annoy any public or religious assembly, or appear in a public or private place in an intoxicated and disorderly condition, or who shall engage in any

other act of public indecency or immorality, shall be deemed guilty of disorderly conduct and upon conviction thereof shall be sentenced to labor for a period not to exceed 30 days.

§ 11.49CA [Reserved]

§ 11.50 Reckless driving.

Any Indian who shall drive or operate any automobile, wagon, or any other vehicle in a manner dangerous to the public safety, shall be deemed guilty of reckless driving and upon conviction thereof shall be sentenced to labor for a period not to exceed 15 days and may be deprived of the right to operate any automobile for a period not to exceed 6 months. For the commission of such offense while under the influence of liquor, the offender may be sentenced to labor for a period not to exceed 3 months.

§ 11.50C Reckless driving.

Any Indian who shall drive or operate any automobile, wagon, or any other vehicle in a manner dangerous to the public safety, shall be deemed guilty of reckless driving and upon conviction thereof shall be sentenced to labor for a period not to exceed 15 days and may be deprived of the right to operate any automobile for a period not to exceed 6 months. For the commission of such offense while under the influence of liquor, the offender may be sentenced for the first offense to labor for a period not to exceed 3 months and for a second or subsequent offense for a period not to exceed 6 months and may be deprived of his right to operate any motor vehicle for a period of 1 year.

§ 11.50ME Traffic violations.

Until such time as the Menominee Tribe enacts its own traffic code, the provisions of the Wisconsin State Traffic Laws (Chapter 346, Title 32 of Wisconsin Statutes) are hereby applicable to the operation of motor vehicles on the Menominee Reservation with the exception that any Indian found guilty of violating such laws shall, in lieu of the penalties provided by State law, be sentenced to labor for a period not to exceed six (6) months and may be deprived of the right to operate any motor vehicle for a period not to exceed six (6) months.

(5 U.S.C. 301 and 25 U.S.C. 2)
[43 FR 40805, Sept. 13, 1978]

§ 11.51 Malicious mischief.

Any indian who shall maliciously disturb, injure or destroy any livestock or other domestic animal or other property, shall be deemed guilty of malicious mischief and upon conviction thereof shall be sentenced to labor for a period not to exceed 6 months.

§ 11.52 Trespass.

Any Indian who shall go upon or pass over any cultivated or enclosed lands of another person and shall refuse to go immediately therefrom on the request of the owner or occupant thereof or who shall willfully and knowingly allow livestock to occupy or graze on the cultivated or enclosed lands, shall be deemed guilty of an offense and upon conviction shall be punished by a fine not to exceed $5, in addition to any award of damages for the benefit of the injured party.

§ 11.52CA [Reserved]

§ 11.53 Injury to public property.

Any Indian who shall, without proper authority, use or injure any public property of the tribe or the United States, shall be deemed guilty of the offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 30 days.

§ 11.53CA [Reserved]

§ 11.54 Maintaining a public nuisance.

Any Indian who shall act in such a manner, or permit his property to fall into such condition as to injure or endanger the safety, health, comfort, or property of his neighbors, shall be deemed guilty of offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 5 days, and may be required to remove such nuisance when so ordered by the court.

§ 11.55 Liquor violations.

Any Indian who shall possess, sell, trade, transport or manufacture any

beer, ale, wine, whisky or any article whatsoever which produces alcoholic intoxication, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 60 days.

§ 11.55ME Liquor violations.

Until such time as the Menominee Tribe enacts its own liquor control ordinance, the provisions of the Wisconsin State laws found in Wis. Ann. §§ 176.01-176.91 relating to liquor control, are hereby incorporated by reference and made applicable to the buying, selling, and consumption of alcoholic beverages on the Menominee Reservation, with the exception that any Indian found guilty of violating such law shall, in lieu of the penalties provided by State law, be sentenced to labor for a period not to exceed sixty (60) days.

(5 U.S.C. 301 and 2 U.S.C. 2)

[43 FR 40805, Sept. 13, 1978]

§ 11.56 Cruelty to animals.

Any Indian who shall torture or cruelly mistreat any animal, shall be deemed guilty of an offense and shall be sentenced to labor for a period not to exceed 30 days.

§ 11.57 Game violations.

Any Indian who shall violate any law, rule or regulation adopted by the tribal council for the protection or conservation of the fish or game of the reservation, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 30 days; and he shall forfeit to the court for the use of any Indian institution such game as may be found in his possession.

§ 11.58 Gambling.

Any Indian who shall violate any law, rule or regulation adopted by the tribal council for the control or regulation of gambling on any reservation, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 30 days.

§ 11.59 Adultery.

Any Indian who shall have sexual intercourse with another person, either of such persons being married to a third person, shall be deemed guilty of adultery and upon conviction thereof shall be sentenced to labor for a period not to exceed 30 days.

§ 11.60C Fornication.

Any Indian who shall have sexual intercourse with another person, neither of such persons being married, shall be deemed guilty of fornication and upon conviction thereof shall be sentenced to labor for a period of not to exceed 25 days.

§ 11.61 Illicit cohabitation.

Any Indian who shall live or cohabit with another as man and wife not then and there being married shall be deemed guilty of illicit cohabitation and upon conviction thereof shall be sentenced to labor for a perod not to exceed 30 days.

§ 11.62 Prostitution.

Any Indian who shall practice prostitution or who shall knowingly keep, maintain, rent or lease, any house, room, tent, or other place for the purpose of prostitution shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 6 months.

§ 11.63 Giving veneral disease to another.

Any Indian who shall infect another person with a venereal disease shall be deemed guilty of an offense, and upon conviction thereof shall be sentenced to labor for a period not to exceed 3 months. The Court of Indian Offenses shall have authority to order and compel the medical examination and treatment of any person charged with violation of this section or found to be afflicted with any communicable disease of this nature.

§ 11.63C Giving venereal disease to another.

Any Indian who shall infect another person with a venereal disease shall be deemed guilty of an offense, and upon conviction thereof shall be sentenced

to labor for a period not to exceed 3 months. The Court of Indian Offenses shall have authority to order and compel the medical examination and treatment of any person charged with violation of this section or found to be afflicted with any communicable disease.

§ 11.63CA [Reserved]

§ 11.64 Failure to support dependent persons.

Any Indian who shall, because of habitual intemperance or gambling or for any other reason, refuse or neglect to furnish food, shelter, or care to those dependent upon him, including any dependent children born out of wedlock, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 3 months, for the benefit of such dependent.

§ 11.64C Failure to support dependent persons.

(a) Any Indian who shall, because of habitual intemperance or gambling or for any other reason, refuse or neglect to furnish food, shelter, or care to those dependent upon him, including any dependent children born out of wedlock, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 3 months, for the benefit of such dependent.

(b) The Court of Indian Offenses shall also have authority to order and compel the payment of all alimony lawfully awarded in any divorce proceeding by any State court having jurisdiction, and nonpayment of such awards shall be accepted as conclusive evidence of failure to provide for dependent persons under this section: *Provided, however,* That an appeal may be taken to the Tribal Court of Appeals whose decision shall be final.

§ 11.65 Failure to send children to school.

Any Indian who shall, without good cause, neglect or refuse to send his children or any children under his care, to school shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 10 days.

CROSS REFERENCE: For regulations pertaining to the education of Indians, see Parts 31-35 of this chapter.

§ 11.66 Contributing to the delinquency of a minor.

Any Indian who shall willfully contribute to the delinquency of any minor shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 6 months.

§ 11.67 Bribery.

Any Indian who shall give or offer to give any money, property or services, or anything else of value to another person with corrupt intent to influence another in the discharge of his public duties or conduct, and any Indian who shall accept, solicit or attempt to solicit any bribe, as above defined, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 6 months; and any tribal office held by such person shall be forfeited.

§ 11.68 Perjury.

Any Indian who shall willfully and deliberately, in any judicial proceeding in any Court of Indian Offenses, falsely swear or interpret, or shall make a sworn statement or affidavit knowing the same to be untrue, or shall induce or procure another person so to do, shall be deemed guilty of perjury and upon conviction thereof shall be sentenced to labor for a period not to exceed 6 months.

§ 11.69 False arrest.

Any Indian who shall willfully and knowingly make, or cause to be made, the unlawful arrest, detention or imprisonment of another person, shall be deemed guilty of an offense, and upon conviction thereof shall be sentenced to labor for a period not to exceed 6 months.

§ 11.70 Resisting lawful arrest.

Any Indian who shall willfully and knowingly, by force or violence, resist or assist another person to resist a lawful arrest shall be deemed guilty of an offense and upon conviction there-

of shall be sentenced to labor for a period not to exceed 30 days.

§ 11.70ME Resisting or obstructing officers.

Until such time as the Menominee Tribe enacts its own ordinances dealing with resisting or obstructing an officer, the provisions of Wisconsin Statutes 946.41 are hereby incorporated by reference and made applicable with the exception that any Indian found guilty of violating the provisions of Wisconsin Statutes 946.41(1) shall, in lieu of the penalties therein provided, be sentenced to labor for a period not to exceed sixty (60) days.

(5 U.S.C. 301 and 25 U.S.C. 2)

[43 FR 40805, Sept. 13, 1978]

§ 11.71 Refusing to aid officer.

Any Indian who shall neglect or refuse, when called upon by any Indian police or other police officer of the Bureau of Indian Affairs, to assist in the arrest of any person charged with or convicted of any offense or in securing such offender when apprehended, or in conveying such offender to the nearest place of confinement shall be deemed guilty of an offense, and upon conviction, shall be sentenced to labor for a period not to exceed 10 days.

§ 11.72 Escape.

Any Indian, who, being in lawful custody, for any offense, shall escape or attempt to escape or who shall permit or assist or attempt to permit or assist another person to escape from lawful custody shall be deemed guilty of an offense, and upon conviction thereof shall be sentenced to labor for a period not to exceed 6 months.

§ 11.73 Disobedience to lawful orders of court.

Any Indian who shall willfully disobey any order, subpena, warrant or command duly issued, made or given by the Court of Indian Offenses or any officer thereof, shall be deemed guilty of an offense and upon conviction thereof shall be fined in an amount not exceeding $180 or sentenced to labor for a period not to exceed 3 months.

§ 11.74 Violation of an approved tribal ordinance.

Any Indian who violates an ordinance designed to preserve the peace and welfare of the tribe, which was promulgated by the tribal council and approved by the Secretary of the Interior, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced as provided in the ordinance.

§ 11.75C Limitation on filing of complaints.

No complaint shall be filed charging the commission of an offense, as defined under §§ 11.38–11.75C, unless such offense shall have been committed within 1 year prior to the date of the complaint.

§§ 11.75CA–11.76CA [Reserved]

§ 11.76H Failure to sell or remove from tribal range infectious or cull animals.

Any Indian who shall willfully refuse to dispose of cull or infectious animals indicated for removal in accordance with the instructions contained in § 72.8 of this chapter, shall be deemed guilty of an offense, and upon conviction thereof shall be sentenced to hard labor for a period of not to exceed 90 days, or a reduction of 10 percent in his grazing permit.

(5 U.S.C. 301 and 25 U.S.C. 2)

[22 FR 10515, Dec. 24, 1957. Redesignated at 43 FR 49982, Oct. 26, 1978; 44 FR 18969, Mar. 30, 1979]

§ 11.77H Introduction of livestock without permit.

Any Indian who shall introduce or cause to be introduced any livestock into unallotted lands of the reservation without a permit shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to a period of not to exceed 60 days at hard labor.

CROSS REFERENCE: For Navajo grazing regulations, see Part 152 of this chapter.

(5 U.S.C. 301 and 25 U.S.C. 2)

[22 FR 10515, Dec. 24, 1957. Redesignated at 43 FR 49982, Oct. 26, 1978]

§ 11.78H Stock trespass in form of unauthorized use of range.

Any Indian who shall willfully graze stock in excess of permitted number on tribal range, or who shall refuse to graze his livestock in accordance with range management plans which consider deferred grazing, the reservation of specific areas for seasonal use, etc., shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to hard labor for a period not to exceed 6 months, and, or, he shall be required to pay damages equal to the value of the forage consumed, salaries and expenses of employees for the time incurred in making investigation, and reports. In lieu of cash, this fine, if levied, may be collected in livestock.

CROSS REFERENCE: For Navajo grazing regulations, see Part 152 of this chapter.

(5 U.S.C. 301 and 25 U.S.C. 2)

[22 FR 10515, Dec. 24, 1957. Redesignated at 43 FR 49982, Oct. 26, 1978]

§ 11.79H Failure to dip sheep.

Any Indian who willfully refuses to dip all of his sheep and goats according to regulations when so directed by the superintendent or his authorized representative shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to hard labor for a period not to exceed 6 months or shall be subject to a fine not to exceed $100 or both. In lieu of cash, this fine, if levied, may be collected in livestock.

(5 U.S.C. 301 and 25 U.S.C. 2)

[22 FR 10515, Dec. 24, 1957. Redesignated at 43 FR 49982, Oct. 26, 1978]

§ 11.80H Making false reports of stock owned.

Any Indian who willfully makes a false report as to the total number of stock owned, or refuses to make a true report of stock ownership, shall be deemed guilty of an offense and upon conviction thereof, shall be fined not less than $10 nor more than $100. In lieu of cash this fine may be collected in livestock.

CROSS REFERENCE: For method of making out reports of stock owned, see § 152.7 of this chapter.

(5 U.S.C. 301 and 25 U.S.C. 2)

[22 FR 10515, Dec. 24, 1957. Redesignated at 43 FR 49982, Oct. 26, 1978]

§ 11.81H Unauthorized fencing of tribal land.

Any Indian who shall willfully fence, for his own advantage, range land belonging to the tribe, without first having secured a permit from the superintendent shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to hard labor for a period not to exceed 6 months.

(5 U.S.C. 301 and 25 U.S.C. 2)

[22 FR 10515, Dec. 24, 1957. Redesignated at 43 FR 49982, Oct. 26 1978]

§ 11.82H Inter-district trespass.

Any Indian who shall allow his stock to trespass on range allocated to others under provisions of the grazing regulations, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to hard labor for a period not to exceed 3 months or shall be subject to a fine equal to the damage done the range allocated to others, or both.

CROSS REFERENCE: For Navajo grazing regulations, see Part 152 of this chapter.

(5 U.S.C. 301 and 25 U.S.C. 2)

[22 FR 10515, Dec. 24, 1957. Redesignated at 43 FR 49982, Oct. 26, 1978]

§ 11.83H Grazing stock without permit.

Any Indian who shall allow his stock to graze on tribal land without a grazing permit shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to hard labor for a period not to exceed 3 months or shall be fined not to exceed $100 or both. In lieu of cash, this fine, if levied, may be collected in livestock.

(5 U.S.C. 301 and 25 U.S.C. 2)

[22 FR 10515, Dec. 24, 1957. Redesignated at 43 FR 49982, Oct. 26, 1978]

§ 11.84H Refusing to brand or mark livestock.

Any Indian who shall willfully refuse to brand or mark his or her livestock where such branding or marking is required in the interest of ownership identification or for other purposes or who alters obliterates or

removes such brands or marks shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to hard labor for a period not to exceed 60 days.

(5 U.S.C. 301 and 25 U.S.C. 2)

[22 FR 10515, Dec. 24, 1957. Redesignated at 43 FR 49982, Oct. 26, 1978]

§ 11.85H Obstructing or interfering with livestock roundups.

Any Indian who shall interfere with or obstruct authorized roundups which have for their purpose the removal of unowned horses or other livestock, or for the purpose of determining ownership or for other purposes designed to protect tribal land from destruction, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to hard labor for a period not to exceed 6 months.

(5 U.S.C. 301 and 25 U.S.C. 2)

[22 FR 10515, Dec. 24, 1957. Redesignated at 43 FR 49982, Oct. 26, 1978]

§ 11.86H Trespass on areas reserved for demonstration purposes.

Any Indian who shall commit willful trespass on areas reserved for demonstration, administration, or agricultural purposes designed for the benefit of the tribe shall be guilty of an offense and upon conviction thereof shall be sentenced to hard labor for a period not to exceed 60 days and shall be subject to a fine not exceeding $100, or both. In lieu of cash, this fine, if levied, may be collected in livestock.

(5 U.S.C. 301 and 25 U.S.C. 2)

[22 FR 10515, Dec. 24, 1957. Redesignated at 43 FR 49982, Oct. 26, 1978]

§ 11.87H Peyote violations.

Any Indian who shall introduce into the Navajo country, sell, use or have in his possession within said Navajo country, the bean known as peyote shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 9 months or a fine not to exceed $100, or both; *Provided,* That it shall not be unlawful for any member of the Native American Church to transport into Navajo country, buy, sell, possess, or use peyote in any form in connection with the religious practices, sacraments or services of the Native American Church.

(5 U.S.C. 301 and 25 U.S.C. 2)

[38 FR 19910, July 25, 1973. Redesignated at 43 FR 49982, Oct. 26, 1978]

§ 11.88ME Curfew.

Until such time as the Menominee Tribe enacts its own curfew ordinance, the provisions of Menominee County Ordinance No. 23A relating to curfew are hereby incorporated by reference and made applicable with the exception that any Indian parent or guardian found guilty of violating such law shall in lieu of the penalties provided by Menominee County Ordinance No. 23A be sentenced to labor for a period not to exceed five (5) days.

(5 U.S.C. 301 and 25 U.S.C. 2)

[43 FR 40805, Sept. 13, 1978]

§ 11.89ME Firearms.

Until such time as the Menominee Tribe enacts its own firearms ordinance, the provisions of the town of Menominee Ordinance No. 39 relating to the use of firearms are hereby incorporated by reference and made applicable within the unincorporated villages of Keshena, Neopit, and Zoar, according to the plats thereof and additions thereto as recorded with the Register of Deeds of Menominee County, Wis., with the exception that any Indian found guilty of violating such laws shall, in lieu of the penalties provided by the said ordinance, be sentenced to labor for a period not to exceed thirty (30) days.

(5 U.S.C. 301 and 25 U.S.C. 2)

[43 FR 40805, Sept. 13, 1978]

§ 11.90ME Keeping of livestock.

Until such time as the Menominee Tribe enacts its own ordinances dealing with the keeping of livestock, the provisions of Menominee County Zoning Ordinance, Article 6, Section 41, prohibiting the keeping of livestock within 200 feet of residential property lines are hereby incorporated by reference and made applicable with the exception that any Indian found guilty of violating such law shall, in lieu of the penalties provided by the Menominee County Zoning Ordinance,

be sentenced to labor for a period not to exceed thirty (30) days.

(5 U.S.C. 301 and 25 U.S.C. 2)

[43 FR 40805, Sept. 13, 1978]

§ 11.91ME Control of dogs.

Until such time as the Menominee Tribe enacts its own ordinances regulating the keeping of dogs, the provisions of the town of Menominee Ordinance No. 1 regulating the licensing and control of dogs are hereby incorporated by reference and made applicable, with the exception that any Indian found guilty of violating such law, in lieu of the penalties provided by the said ordinance, be fined five dollars ($5.00) for the first offense and ten dollars ($10.00) for each succeeding offense.

(5 U.S.C. 301 and 25 U.S.C. 2)

[43 FR 40805, Sept. 13, 1978]

§ 11.92ME Forest fire protection.

Until such time as the Menominee Tribe enacts its own ordinances dealing with fire protection, detection, control and suppression, the provisions of the Wisconsin Administration Code, DNR Section 26.12(5)(a) requiring a written permit issued by Wisconsin Department of Natural Resources Fire Warden before any person sets any fire except for warming the person or cooking food, are hereby incorporated by reference and made applicable to the setting of fires on the Menominee Reservation. Any Indian found guilty of failing to obtain a permit shall be sentenced to labor for a period not to exceed thirty (30) days.

(5 U.S.C. 301 and 25 U.S.C. 2)

[43 FR 40805, Sept. 13, 1978]

§ 11.93ME Possession of controlled substances.

Until such time as the Menominee Tribe enacts its own ordinances dealing with the possession of controlled substances, the provisions of Wisconsin Statutes 161.41(3) are hereby incorporated by reference and made applicable with the exception that any Indian found guilty of violating such law shall, in lieu of the penalties provided by Wisconsin Statutes 161.41(3), be sentenced to labor for a period not to exceed thirty (30) days.

(5 U.S.C. 301 and 25 U.S.C. 2)

[43 FR 40806, Sept. 13, 1978]

§ 11.94ME Garbage and rubbish.

Until such time as the Menominee Tribe enacts its own ordinances dealing with garbage, rubbish, and inflammable material, the provisions of the town of Menominee Ordinance No. 4 regulating disposal of garbage, rubbish and inflammable material are hereby incorporated by reference and made applicable with the exception that the designation of Menominee Enterprises, Inc., shall include Menominee Tribal Enterprise, that public dumps may be designated by the Menominee Tribe as well as by the town of Menominee and that any Indian found guilty of violating such law shall, in lieu of the penalties provided by town of Menominee Ordinance No. 4, be sentenced to labor for a period not to exceed five (5) days in the event of the first offense and not to exceed thirty (30) days for each succeeding violation.

(5 U.S.C. 301 and 25 U.S.C. 2)

[43 FR 40806, Sept. 13, 1978]

§ 11.95ME Extradition.

(a) Whenever the Area Director, Minneapolis Area Office, is informed and believes that an Indian has committed a crime outside the Menominee Reservation and is present on the Menominee Reservation, using it as an asylum from prosecution, the Area Director may order a police officer of the Menominee Reservation to apprehend such Indian and deliver him to the authorities seeking his arrest at the exterior boundaries of the reservation.

(b) If a person, apprehended pursuant to this section, so demands, he shall be taken by the arresting police officers to the Menominee Court of Indian Offenses where a Judge shall hold a hearing. If it appears that there is no probable cause to believe the Indian is guilty of the crime with which he is charged outside the reservation, or if it appears probable that the Indian will not receive a fair trial in the state court, the Judge shall

order the Indian released from custody.

(5 U.S.C. 301 and 25 U.S.C. 2)

[43 FR 40806, Sept. 13, 1978]

§ 11.96ME Breaking and entering.

Until such time as the Menominee Tribe enacts its own breaking and entering ordinance, the provisions of Wisconsin Statutes 943.14, "Criminal trespass to dwellings," are hereby incorporated by reference and made applicable, with the exception that any Indian found guilty of violating the provisions of Wisconsin Statutes 943.14 shall, in lieu of the penalties therein provided, be sentenced to labor for a period not to exceed six (6) months.

(5 U.S.C. 301 and 25 U.S.C. 2)

[43 FR 40806, Sept. 13, 1978]

§ 11.97ME Juvenile services.

Until such time as the Menominee Tribe enacts its own juvenile code, the provisions of the Wisconsin State laws relating to juveniles, Wisconsin Statutes §§ 48.12-48.47, § 48.78, §§ 48.81-48.97, and Chapter 54, are hereby incorporated by reference and made applicable to juvenile cases arising on the Menominee Reservation. Provided, That the following statutes are not to apply: Wis. Stat. Ann. §§ 48.31, 48.32, 48.41, 48.83, and 48.89. And provided further, That rendering of juvenile services to the Menominee Tribe shall be in accordance with the agreement entered into on March 15, 1978, between the Wisconsin Department of Health and Social Services and the Menominee Restoration Committee.

(5 U.S.C. 301 and 25 U.S.C. 2)

[43 FR 40806, Sept. 13, 1978]

§ 11.98ME Date of incorporated statutes.

All Wisconsin statutes, Menominee County ordinances, and ordinances of the town of Menominee, incorporated in §§ 11.50ME-11.97ME shall be those in effect on the date of publication of this rulemaking, together with any amendments hereafter adopted.

(5 U.S.C. 301 and 25 U.S.C. 2)

[43 FR 40806, Sept. 13, 1978]

THE INDIAN POLICE

§ 11.301 Superintendent in command.

The superintendent of each Indian reservation shall be recognized as commander of the Indian police force and will be held responsible for the general efficiency and conduct of the members thereof. It shall be the duty of the superintendent, or his duly qualified representative, to keep himself informed as to the efficiency of the Indian police in the discharge of their duties, to subject them to a regular inspection, to inform them as to their duties and keep a strict accounting of the equipment issued them in connection with their official duties. It shall be the duty of the superintendent to detail such Indian policemen as may be necessary to carry out the orders of the Court of Indian Offenses and to preserve order during the court sessions. The superintendent shall investigate all reports and charges of misconduct on the part of Indian policemen and shall exercise such proper disciplinary measures as may be consistent with existing regulations. No superintendent of any Indian reservation shall assign or detail any member of the Indian police force for duty as janitor or chauffeur or for any duty not connected with the administration of law and order.

§ 11.302 Police commissioners.

The superintendent of any Indian reservation may, with the approval of the Commissioner of Indian Affairs, designate as police commissioner any qualified person. Wherever any special or deputy special officer is regularly employed in any Indian jurisdiction, he shall be police commissioner for that jurisdiction. Such police commissioner shall obey the orders of the superintendent of the reservation where employed and shall see that the orders of the Court of Indian Offenses are properly carried out. The police commissioner shall be responsible to the superintendent for the conduct and efficiency of the Indian police under his direction and shall give such instruction and advice to them as may be necessary. The police commissioner shall also report to the superintendent all violations of law or regulation and any

misconduct of any member of the Indian police.

§ 11.303 Police training.

It shall be the duty of the superintendent to maintain from time to time as circumstances require and permit classes of instruction for the Indian policemen. Such classes shall familiarize the policemen with the manner of making searches and arrests, the proper and humane handling of prisoners, the keeping of records of offenses and police activities, and with court orders and legal forms and the duties of the police in relation thereto, and other subjects of importance for efficient police duty. It shall further be the purpose of the classes to consider methods of preventing crime and of securing cooperation with Indian communities in establishing better social relations.

§ 11.304 Minimum standards for police programs.

The following minimum standards are required of all law enforcement programs that receive funding from the Bureau of Indian Affairs:

(a) Each law enforcement officer shall be specifically identified as such and shall be individually authorized to make arrests and carry firearms. Only employees assigned duties as law enforcement officers and qualified under paragraph (e) of this section may be authorized to carry firearms or make arrests.

(b) Uniforms, when worn, shall positively identify the wearer as a law enforcement officer. Badge, name plate and tribal or Bureau of Indian Affairs patch shall be visible at all times. Uniforms of all enforcement personnel shall be plainly distinguishable from the uniforms of any non-enforcement personnel working on the reservation. Each officer shall be issued a standard identification card bearing a photograph of the officer.

(c) A firearm may be discharged only when in the considered judgment of the officer there is imminent danger of loss of life or serious bodily injury to the officer or to another person. The weapon may be fired only for the purpose of rendering the person at whom it is fired incapable of continuing the activity prompting the officer to shoot. The firing of warning shots is prohibited. This policy does not apply to the use of firearms to participate in official marksmanship training or to kill a dangerous or seriously injured animal.

(d) Except in firearms training, each time a firearm is used for law enforcement purposes a report shall be filed with the superior of the officer who used the weapon. Whenever use of a weapon results in serious injury or death of any person, the officer firing the weapon shall be placed on administrative leave, or be assigned to strictly administrative duties pending a thorough investigation of all circumstances surrounding the incident.

(e) Each law enforcement officer must have attained a score of 70 percent or better on an approved firearms qualification course within the previous six months to be qualified to carry a firearm. Whenever an officer's firearms qualification lapses, the officer shall return all weapons issued. The following courses are approved firearms qualification courses:

(1) The National Rifle Association National Police Course.

(2) The National Rifle Association 25-Yard Course.

(3) The National Rifle Association Practical Pistol Course.

(4) The Federal Bureau of Investigation Practical Pistol Course.

(f)(1) Law enforcement officers shall be issued the standard police .38 caliber revolver and ammunition. The use of other types of hand guns such as automatics, parabellums, or calibers other than the authorized .38 caliber is prohibited. The barrel length may be not more than 6 inches nor less than 4 inches for uniformed personnel, and not less than 2 inches for plainclothes personnel. Only standard load ammunition may be used. Bureau of Indian Affairs officers who carried a .357 Magnum revolver while performing law enforcement functions for the Bureau of Indian Affairs before July 17, 1972, may be authorized to carry a .357 Magnum revolver. The Commissioner of Indian Affairs may grant a written waiver to permit Bureau of Indian Affairs officers to

carry hand guns not authorized by this paragraph.

(2) Each tribe shall specify the type of firearms, ammunition and auxiliary equipment to be used by the law enforcement officers of that tribe.

(g)(1) Newly employed patrol officers shall successfully complete within their first year of service the approved Basic Police Training Course conducted at the Indian Police Academy or a similar course substantially meeting or exceeding the level of training provided by the Indian Police Academy and approved by the Commissioner of Indian Affairs. An officer who fails to complete the training required by this subparagraph shall be discharged or transferred to a position not involving law enforcement duties. Transfer may result in demotion.

(2) Prior to, or within one year after, promotion or appointment to a supervisory enforcement position, an employee shall complete the approved Supervisory Enforcement Officer Training Course conducted at the Indian Police Academy or a similar course substantially meeting or exceeding the level of training provided by the Indian Police Academy and approved by the Commissioner of Indian Affairs. An officer who is serving in a supervisory position and fails to complete the training required in this subparagraph shall be transferred to a nonsupervisory position. Transfer may result in demotion.

(3) Prior to, or within one year after, promotion or appointment to a criminal-investigator position, an officer shall successfully complete the Criminal-Investigator Training Course conducted at the Indian Police Academy or a similar course substantially meeting or exceeding the level of training provided by the Indian Police Academy and approved by the Commissioner of Indian Affairs. An officer who is serving in a criminal-investigator position and fails to complete the training required in this subparagraph shall be transferred to a noncriminal-investigator position. Transfer may result in demotion.

(4) Prior to, or within one year after, promotion or appointment to a supervisory criminal-investigator position, an officer shall successfully complete the Executive Management Course of Training conducted at the Indian Police Academy or a similar course substantially meeting or exceeding the level of training provided by the Indian Police Academy approved by the Commissioner of Indian Affairs. An Officer who is serving in a supervisory criminal-investigator position and fails to complete the training required in this subparagraph shall be transferred to a nonsupervisory criminal-investigator position. Transfer may result in demotion.

(h) Each law enforcement officer shall receive a minimum of forty hours of local in-service training annually to meet training needs determined by the tribe and to keep abreast with developments in the field of law enforcement.

(i) The Civil Service Commission accepted Bureau of Indian Affairs standards for skill level GS-083 are the minimum entry level qualifications for a patrol officer. The Civil Service Commission standards for skill level GS-1811 are the minimum entry level qualifications for criminal investigators. The standards are available for inspection or copying at any Bureau, Agency, Area, or Central Personnel Office.

(j) Salaries paid law enforcement officers by a tribal organization under a contract under Part 271 of this chapter or by a tribal governing body under a grant under Part 272 of this chapter shall be equal to or greater than the salaries paid officers with similar responsibilities employed directly by the Bureau of Indian Affairs.

(k) Prior to taking an adverse action against any employee, the contractor under Part 271 of this chapter or grantee under Part 272 of this chapter shall take the following steps:

(1) Notify the employee of the contemplated action and give a full specification of the reasons such action is contemplated.

(2) Provide the employee with a written statement of any specific violation of rules, regulations, or statutes the contractor or grantee alleges the employee has committed and the names of all persons upon whose testimony these allegations are based.

(3) Set a hearing date not less than 15 days after the employee has been given the written statement of allegation.

(4) Provide the employee and the employee's counsel at the hearing with an opportunity to confront and cross-examine each adverse witness.

(5) Provide the employee and the employee's counsel at the hearing with an opportunity to delineate issues, to present factual contentions in an orderly manner and to generally protect the employee's interest.

(6) Reconsider the decision to take the adverse action based solely on the evidence given at the hearing and provide the employee at the time the decision is announced with a written statement of the reasons for the decision and the evidence relied upon in reaching the decision.

(7) Issue a final order based on the decision reached after the hearing.

(l) After October 1, 1977, the tribe shall require each law enforcement officer it employs to adhere to a law enforcement code of conduct prescribed by the tribe. The code shall establish specific rules concerning conflicts of interest, employee conduct both on and off duty, impartiality and thoroughness in performance of duty, and acceptance of gifts or favors.

(m) A contractor under Part 271 of this chapter shall use the same report forms and submit the same statistical reports to the Central Office that are required of Bureau of Indian Affairs police programs.

(n) (1) When a law enforcement officer receives an oral or written allegation that a law enforcement officer employed by a program funded by the Bureau of Indian Affairs has violated the civil rights of any person, the officer receiving the allegation shall prepare a written report of the allegation and transmit it through the chain of command to the chief law enforcement officer within seven days of receipt of the allegation.

(2) Not later than seven days after being notified of the allegation, the chief law enforcement officer shall take the following actions:

(i) Notify the Federal Bureau of Investigation, the agency superintendent or contracting officer's representative, and the tribal council. The notice to the Federal Bureau of Investigation shall state whether an investigation is being conducted to determine whether tribal law was violated and shall cite any relevant provisions of the tribal code.

(ii) If the officer against whom the allegation is made is an employee of the Bureau of Indian Affairs, prepare a memorandum to the superintendent, who shall, through the area director and the Assistant Secretary—Indian Affairs, transmit to the Director, Office of Audit and Investigation, a request that the allegation be investigated to determine whether any administrative action is warranted. The memorandum shall be transmitted through the superintendent and the area director. The tribal council shall receive a copy of any such memorandum.

(iii) If the officer against whom the allegation is made is an employee of a tribal contractor, notify both the top Bureau of Indian Affairs law enforcement officer assigned to the agency and the tribal council. If there is no Bureau of Indian Affairs law enforcement officer at the agency, the superintendent and the area special officer shall be notified.

(3) If the chief law enforcement officer is accused of a civil rights violation, the report of the allegation shall be transmitted directly to the agency superintendent, who shall take the actions required by subparagraph (2) of this paragraph. If there is no agency superintendent, the report of the allegation shall be transmitted directly to the area director, who shall take the actions required by subparagraph (2) of this paragraph.

(4) As soon as all actions required by paragraphs (1), (2), and (3) of this paragraph have been completed, a copy of all documents concerning the allegation shall be transmitted to the Chief, Division of Law Enforcement Services, in the Central Office

(5 U.S.C. 301, 25 U.S.C. 2 and 25 U.S.C. 450m)

[41 FR 47234, Oct. 28, 1976; 41 FR 51012, Nov. 19, 1976, as amended at 42 FR 46518, Sept. 16, 1977; 43 FR 16973, Apr. 12, 1978]

§ 11.305 Minimum standards for detention programs.

Each detention program that receives funds from the Bureau of Indian Affairs shall meet the following minimum standards:

(a) No sick or injured person may be booked or held in a detention facility unless a medical release has been obtained from a medical officer.

(b) Any inmate requiring medical attention shall be treated as soon as possible.

(c) The jailor or other responsible employee shall maintain control over the custody and issue of all medicine to prisoners under treatment for chronic ailments to insure proper use and to guard against overdose.

(d) Routine inspections of all cells shall be conducted every thirty (30) minutes to protect the safety and welfare of prisoners. A record of each inspection shall be logged in appropriate records.

(e) Only persons who have been specifically authorized by the jailor to visit a prisoner or prisoners may be allowed in the cell block areas.

(f) Special attention shall be given to cells occupied by persons jailed for intoxication to guard against the infliction of personal injury.

(g) No juvenile may be kept in the same cell with any adult.

(h) Each prisoner shall be served three nutritionally adequate meals a day.

(i) Each foodhandler shall be given a medical examination and, if training in foodhandling is available locally from the Indian Health Service, shall complete the foodhandler training offered by the Indian Health Service prior to employment.

(j) All jail facilities including kitchens shall be subject to periodic inspections by personnel from the Indian Health Service or other appropriate agency to insure proper sanitary conditions.

(k) The number of persons in each cell may not exceed the number for which the cell was designed.

(l) A record of all visitors shall be maintained indicating date, time and identity of each visitor.

(m) Proper precautions shall be taken to insure the safekeeping of property belonging to inmates.

(n) Prior to, or within six months after, promotion or appointment to a position involving detention/jail duties, an employee shall successfully complete a Detention/Jail Operations and Management Training Course approved by the Commissioner of Indian Affairs. An employee who is serving in a position involving detention/jail duties and fails to complete the training required by this paragraph shall be transferred to a position not involving detention/jail or law enforcement duties or discharged. Transfer may result in demotion.

(5 U.S.C. 301, 25 U.S.C. 2 and 25 U.S.C. 450k)

[41 FR 47235, Oct. 28, 1976, as amended at 42 FR 46518, Sept. 16, 1977]

§ 11.306 Return of equipment.

Upon the resignation, death or discharge of any member of the Indian police all articles or property issued him in connection with his official duties must be returned to the superintendent or his representative.

PART 12—CODE OF OFFENSES FOR NAVAJO-HOPI SETTLEMENT ACT SECRETARIAL RESPONSIBILITIES

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AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, and 640d-18.

SOURCE: 42 FR 21281, Apr. 26, 1977, unless otherwise noted.

Subpart A—Title, Purpose and Definitions

§ 12.1 Title.

The provisions contained in Part 12 shall be known as the "Code of Offenses for Navajo-Hopi Settlement Act Secretarial Responsibilities."

§ 12.2 Purpose.

(a) It is the purpose of the regulations in this code to provide the means through adequate law enforcement for the completion of those tasks imposed upon the Secretary of Interior in the Navajo-Hopi Settlement Act, Act of December 22, 1974, Pub. L. 93-531, 88 Stat. 1712, 55 U.S.C. 640d-640d-24.

(b) The regulations in this code shall continue to apply until such time as notice is published in the FEDERAL REGISTER of the completion of the Settlement Act mandated responsibilities within a range management unit located within the former Joint Use Area.

(c) The regulations in this code shall be enforced by the Court of Indian Offenses known as the Court as provided in 25 CFR Part 12.

§ 12.3 Definitions.

In this code, unless the context otherwise requires:

(a) "Adult" shall mean a person who is 18 years of age or older.

(b) "Code" shall mean the Code of Offenses for Navajo-Hopi Settlement Act Secretarial Responsibilities.

(c) "Indian" shall mean any person of Indian descent who is a member of any recognized Indian tribe under federal jurisdiction.

(d) "Non-Indian" shall mean a person who is not an Indian.

(e) "Person" shall mean an individual and, where relevant, a corporation or unincorporated association.

(f) "Property" shall mean both real and personal property.

(g) "Courts" shall mean the Trial Court and Court of Appeals for the former Joint Use Area.

(h) "Project Officer" means the Project Officer of the Bureau of Indian Affairs, Administrative Office, Flagstaff, Arizona 86001, to whom has been delegated the authority of the Commissioner to act in those matters respecting the former Joint Use Area pertaining to completion of the tasks imposed upon the Secretary of the Interior under the Navajo-Hopi Settlement Act, 25 U.S.C. 640d, et seq.

(i) "Former Joint Use Area" shall mean that area found in *Healing* v. *Jones*, 210 F. Supp. 125 (D.Az.) 1962 to be held in joint, undivided and equal ownership by the Navajo and Hopi Tribes and partitioned on February 10, 1977, by the District Court in the supplemental proceeding entitled *Sekaquaptewa* v. *MacDonald*, No. 579 Act (JAW), as authorized under the Settlement Act.

Subpart B—Judicial Power

§ 12.4 Judicial power.

The judicial powers within the former Joint Use Area shall be vested in a Court of Appeals and a Trial Court.

Subpart C—The Court of Appeals

§ 12.5 Jurisdiction.

The Court of Appeals shall have jurisdiction to hear appeals from final orders and final judgments of the Trial Court as provided in the Appeal provisions contained herein.

§ 12.6 Composition.

The Court of Appeals shall consist of a single Judge, other than the presiding Judge of the Court which rendered the order or judgment from which appeal is taken. When the Chief Judge is the Judge of the rendering Court, an Associate Judge shall sit as the Appeal Court Judge, with at least two other Judges to hear the appeal.

§ 12.7 Sessions.

The Court of Appeals shall meet within twenty working days after notice of an appeal or application for other relief has been filed with the Clerk of the Court, or as soon thereafter as possible.

Subpart D—Joint Use Trial Court

§ 12.8 Composition.

The Trial Courts shall consist of a Judge appointed by the Commissioner of Indian Affairs or his duly appointed representative. There shall be a Chief Judge whose duties shall be full time; and there may be one or more Associate Judges who may be called to serve when the occasion arises. The Associate Judges may be hired on contract and compensated on a per diem basis.

§ 12.9 Court sessions.

(a) Regular sessions of the Trial Courts may be held on a regular workday at times and places designated by the Chief Judge.

(b) Special sessions of the Trial Courts may be held as necessary upon call of the Chief Judge: *Provided*, That such sessions are held at reasonable times and places.

§ 12.10 Qualification of judges.

Any person over the age of 21 years shall be eligible to serve as a Judge of the Court if he has never been convicted of a felony or, within the preceding year, been convicted of a misdemeanor other than a minor traffic violation. Such person shall complete a course of training in judicial procedures.

§ 12.11 Disqualification.

No Judge shall hear or determine any case wherein he has any direct interest or wherein any relative, by marriage or blood in the first or second degree, is a party. Any party to a proceeding may raise the issue of the qualification of the Judge to hear the case.

§ 12.12 Removal.

(a) Any Judge of the Court may be suspended, dismissed, or removed by the Commissioner of Indian Affairs or his representative for any of the following reasons:

(1) Conviction of felony in any court;

(2) Conviction of any offense involving moral turpitude in any court;

(3) Conviction of the offense of disorderly conduct;

(4) Being under the influence of alcoholic beverages while presiding over the Court;

(5) Any other conduct unbecoming to a Judge of the Court.

(b) A Judge shall be given full and fair opportunity to reply to any and all charges for which he may be removed from his judicial office.

Subpart E—Jurisdiction of Court

§ 12.13 Jurisdiction.

(a) The Trial Court of the Courts of the former Joint Use Area shall have jurisdiction over all offenses enumerated in the code when committed by any person within the former Joint Use Area.

(1) All persons employed by the Bureau of Indian Affairs shall be subject to jurisdiction of the Courts.

(b) The jurisdiction of the Courts shall be exclusive of any other court over those matters pertaining to livestock reduction, range restoration, surveying, monumenting and fencing within the former Joint Use Area with respect to any offense enumerated herein over which a Federal Court may assert jurisdiction, the jurisdiction of the Courts shall be concurrent and not exclusive.

Subpart F—Rules and Court Powers

§ 12.14 Court rules.

The Chief Judge of the Trial Court shall promulgate rules to govern the proceedings in the Trial Courts, subject to the approval of the Project Officer of the former Joint Use Area, *Provided*, That such rules shall not abridge, enlarge, or modify any substantive rights and shall preserve the right of trial by jury as provided in Subpart H, § 12.45 of this chapter.

§ 12.15 Powers of the courts.

The Court of Appeals and the Trial Courts shall have, but not be limited to, the following powers:

(a) To punish for contempt any of its officers or other persons present at judicial proceedings;

(b) To compel witnesses to attend and testify and to produce documents or other tangible objects to be used as

evidence, *Provided*, That a defendant in a criminal trial may not be compelled to be a witness against himself.

Subpart G—Court Officials

§ 12.16 Officers of the courts.

Officers of the Courts shall include:
(a) Court Clerks and court interpreters;
(b) Police Officers, Probation Officers, and other persons when carrying out orders of the Courts;
(c) Professional and lay counsel representing parties before the Courts;
(d) Bailiffs; and
(e) Prosecutor.

§ 12.17 Court clerks.

(a) A person shall be employed to serve the Courts and shall be known as the Clerk of the Court. Additional clerks may be employed as necessary.
(b) The Clerk of the Court is charged with the duty of assisting the lawful functioning of the courts. Such duties shall include, but not be limited to, the following:
(1) Drafting complaints, subpeonas, warrants, writs, or other orders of the Court;
(2) Maintaining records of court proceedings;
(3) Administering oaths;
(4) Collecting and accounting for fines and other property taken into the custody of the Courts;
(5) Accepting bonds; and
(6) Filing notices of appeal and petitions.

§ 12.18 Representation before the courts.

A person before the Courts may represent himself or have another person or a professional attorney serve as his counsel.

Subpart H—General Provisions

§ 12.19 Public records.

Except as otherwise provided in this Code, the Courts shall keep open for inspection a record of all proceedings of each Court. Such record shall reflect the title of the case, the names and addresses of parties and witnesses, the substance of the complaint, the date of the hearing or trial, by whom conducted, the findings of the Court or jury, and the judgment or order entered, together with any other facts or circumstances deemed of importance to the case.

§ 12.20 Copies of laws.

The Courts shall be provided with, or have access to, all tribal, Federal and state laws and regulations of the Bureau of Indian Affairs applicable to the conduct of persons within the boundaries of the former Joint Use Area.

§ 12.21 Complaints.

(a) All prosecutions for violation of the Code of Offenses shall be initiated by complaint. A Complaint is a written statement sworn to by the complaining witness and charging that a named individual(s) has committed a particular criminal offense.
(b) Complaints shall contain:
(1) The signature of the complaining witness sworn to before a judge or an individual designated by the Chief Judge; and
(2) A written statement by the complaining witness describing in ordinary language the nature of the offense committed including the time and place as nearly as may be ascertained; and
(3) The name or description of the person alleged to have committed the offense; and
(4) The section of the Code of Offenses allegedly violated.
(c) The Chief Judge of the Court may designate an individual who shall be available to assist persons in drawing up complaints and who shall screen them for sufficiency. Complaints shall then be submitted without unnecessary delay to a judge to determine whether a warrant or summons should be issued.
(d) If the complaint, or the complaint together with other sworn statements, is sufficient to establish probable cause to believe that a crime has been committed by the person charged, the court shall issue a warrant pursuant to § 12.23 of this Code instructing the police to arrest the named accused or, in lieu thereof, the court shall issue a summons commanding the accused to appear before the

court at a specified time and place to answer to the charge.

(e) When an accused has been arrested without a warrant, a complaint shall be filed forthwith with the court for review as to whether probable cause exists to hold the accused, and in no instance shall a complaint be filed later than at the time of arraignment.

§ 12.22 Arrests.

(a) Arrest is the taking of a person into police custody in order that he may be held to answer for a criminal offense.

(b) No police officer shall arrest any person for a criminal offense set out in the Code except when:

(1) The officer shall have a warrant signed by a Judge of the Courts commanding the arrest of such person, or the officer knows for a certainty that such a warrant has been issued; or

(2) The offense shall occur in the presence of the arresting officer; or

(3) The officer shall have probable cause to believe that an offense has been committed and that the person to be arrested has committed the offense.

§ 12.23 Arrest warrants.

(a) Every Judge of the Courts shall have authority to issue warrants to arrest and such warrants shall be issued only upon a showing of probable cause in sworn written statements. The Trial judge shall deny the issuance of a warrant, if he finds that there is not probable cause to believe that the offense charged has been committed by the named accused.

(b) The arrest warrant shall contain the following information:

(1) Name or description and address, if known, of the person to be arrested.

(2) Date of issuance of the warrant.

(3) Description of the offense charged.

(4) Signature of the issuing judge.

§ 12.24 Notification of rights at time of arrest.

Upon arrest the suspect shall be advised of the following rights:

(a) That he has the right to remain silent.

(b) That any statements made by him may be used against him in court.

(c) That he has the right to obtain counsel at his own expense.

(d) That if he wishes to answer questions of the police, he may have his counsel present with him.

§ 12.25 Summons in lieu of warrant.

(a) When otherwise authorized to arrest a suspect a police officer or a judge may, in lieu of a warrant, issue a summons commanding the accused to appear before the Court at a stated time and place and answer to the charge.

(b) The summons shall contain the same information as a warrant, except that it may be signed by a police officer.

(c) If a defendant fails to appear in response to a summons, a warrant for his arrest shall be issued.

§ 12.26 Hot pursuit.

A police officer may arrest a person beyond the territorial boundaries of the former Joint Use Area when such officer has probable cause to believe that the person has committed an offense and is attempting to escape arrest.

§ 12.27 Search warrant—defined.

A search warrant is a written order signed by a Court judge, and directed to a police officer ordering him to conduct a search and seize items or property specified in the warrant. A warrant shall describe the property or place to be searched and shall describe the items or person to be seized.

§ 12.28 Issuance of search warrant.

(a) Every Court judge shall have the power to issue warrants for the search and seizure of property and premises of any person under the jurisdiction of the court.

(b) No warrant of search and seizure shall be issued except upon probable cause that a search will discover: Stolen, embezzled or contraband or otherwise criminally possessed property; property which has been or is being used to commit a criminal offense; or property which constitutes evidence of the commission of a criminal offense. Such probable cause shall

be supported by a duly signed, written and sworn statement based upon reliable information.

§ 12.29 Execution and return of search warrant.

Warrants of search and seizure shall only be executed by police officers. The executing officer shall return the warrant to the Court within the time limit shown on the face of the warrant, which in no case shall be longer than 10 days from the date of issuance. Warrants not returned within such time limit shall be void.

§ 12.30 Search without a warrant.

No police officer shall conduct any search without a valid warrant except:

(a) Incident to making a lawful arrest; or

(b) With consent of the person being searched; or

(c) When he has probable cause to believe that the person searched may be armed and dangerous; or

(d) When the search is of a moving vehicle and the officer has probable cause to believe that it contains contraband, stolen, or embezzled property.

§ 12.31 Contraband, confiscated, and abandoned property.

(a) The disposition of all property, confiscated as contraband, seized as evidence, or otherwise taken into the custody of the Court, shall be determined at a hearing before a Trial Court.

(b) The Trial Court shall, upon satisfactory proof of ownership, order such property to be delivered to the rightful owner, unless such property is required as evidence, it shall not be returned until final judgment in the case is entered. In no case shall property be returned where possession of such property is unlawful; such property may be declared property of the United States. However, property delivered to the custody of the Court by a private person shall become the property of such person if it is not claimed within 30 days after the hearing.

(c) Any property declared to be the property of the United States may be dealt with as authorized by Federal law.

(d) The Clerk of the Court shall keep written records of all transfers and dispositions of property taken into the custody of the Court.

(e) Contraband shall mean:

(1) Any property, under this Code, which is illegal to possess.

§ 12.32 Arraignment.

(a) Arraignment is the bringing of an accused before the court, informing him of his rights and of the charge against him, receiving his plea, and setting bail as appropriate in accordance with § 12.35.

(b) Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody and in no instance shall arraignment be later than the next regularly scheduled session of court.

§ 12.33 Rights of accused at arraignment.

Before an accused is required to plead to any criminal charge the judge shall:

(a) Read the complaint to the accused and determine that he understands the complaint and the section of the Code which he is charged with violating, including the maximum authorized penalty; and

(b) Advise the accused that he has the right to remain silent; to be tried by a jury; and to be represented by counsel at his own expense and that the arraignment will be postponed should he desire to consult with counsel.

§ 12.34 Receipt of plea at arraignment.

(a) If the accused pleads "not guilty" to the charge the judge shall then inform him of a trial date and set conditions for bail prior to trial.

(b) If the accused pleads "guilty" to the charge the judge shall determine that the plea is made voluntarily and that the acused understands the consequences of the plea, including the rights which he is waiving by the plea. The judge may then impose sentence or defer sentencing for a reasonable time in order to obtain any information he deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to

inform the court of facts in mitigation of the sentence.

(c) If the accused refuses to plead, the judge shall enter a plea of not guilty on his behalf.

§ 12.35 Bail—Release prior to trial.

Every person charged with a criminal offense before the Court shall be entitled to release from custody pending trial under whichever one or more or the following conditions is deemed necessary to reasonably assure the appearance of the person at any time lawfully required:

(a) Release on personal recognizance upon execution by the accused of a written promise to appear at trial and all other lawfully required times.

(b) Release to the custody of a designated person or organization agreeing to assure the accused's appearance.

(c) Release with reasonable restrictions on the travel, association, or place of residence of the accused during the period of release.

(d) Release after deposit by the accused or a bail bondsman's bond in either cash or other sufficient collateral in an amount specified by the judge or a bail schedule. The judge, in his discretion, may require that the accused post only a portion of the total bond, the full sum to come due if the accused fails to appear as ordered.

(e) Release after execution of bail agreement by two responsible members of the community.

(f) Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.

§ 12.36 Bail—Release by police officer.

Any Police Officer authorized to do so by the court may admit an arrested person to bail pursuant to the bail schedule or release upon personal recognizance. Police Officers shall have available a bail schedule prepared by the court which shall be used for setting money bond where such condition of release is deemed necessary. Any Police Officer who refuses to release an accused on bail or who specifies a bail condition which the accused is unable to satisfy shall bring such accused before a judge for review of the release conditions at the first available opportunity and without unnecessary delay.

§ 12.37 Bail—Release pending appeal.

Every person who has been convicted of an offense and who has filed an appeal or a petition for a writ of habeas corpus shall be treated in accordance with the provisions of § 12.36 of this chapter unless the judge has substantial reason to believe that no conditions of release will reasonably assure the apearance of the accused or that release of the accused is likely to pose a danger to the accused, or to any other person. If the judge finds such to be the case he may order detention of the accused.

§ 12.38 Withdrawal of guilty plea.

The court may, in its discretion, allow a defendant to withdraw a plea of guilty whenever it appears that the interest of justice and fairness would be served by doing so.

§ 12.39 Issuance of subpoenas.

(a) Upon request of any party to a case or upon the court's own initiative, the court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence which is relevant and necessary to the determination and not an undue burden on the person possessing the evidence of the case. The clerk of the court may act on behalf of the court and issue subpoenas which have been signed by a judge and which are to be served within the confines of the former Joint Use Area.

(b) A subpoena shall bear the signature of the Chief Judge or an Associate Judge of the Court and it shall state the name of the court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

§ 12.40 Service of subpoena.

(a) A subpoena may be served at any place within or without the confines of the former Joint Use Area but any subpoena to be served outside the

former Joint Use Area shall be issued personally by a Judge of the Court.

(b) A subpoena may be served by any Police Officer or other person appointed by the court for such purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his place of residence with any competent person 16 years of age or older who also resides there.

(c) Proof of service of the subpoena shall be filed with the clerk of the court by noting on the back of a copy of the subpoena the date, time, and place that it was served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena.

§ 12.41 Failure to obey subpoena.

In the absence of a justification satisfactory to the court, a person who fails to obey a subpoena may be deemed to be in contempt of court and a bench warrant may be issued for his arrest.

§ 12.42 Witness fees.

(a) Each witness answering a subpoena shall be entitled to a fee as set by rules of the Courts and approved by the Project Officer for each day his services are required in court. In addition, the court may order the payment of reasonable travel and living expenses of the witness.

(b) The fees and expenses provided for in this section shall be paid to the witness upon completion of the trial, but such expenses may be taxed as costs against the defendant if he is found guilty, provided, however, that no defendant shall be incarcerated solely because of his inability to pay such costs immediately.

(c) If the court finds that a complaint was not filed in good faith but with frivolous or malicious intent, it may order the complainant to reimburse the Court for the expenditures incurred under this section, and such order shall constitute a judgment upon which execution may be levied.

§ 12.43 Trial procedure.

(a) The time and place of court sessions, and all other details of judicial procedure shall be set out in rules of court adopted pursuant to § 12.14 of this Code.

(b) The court shall not be bound by common law rules of evidence, or the rules of evidence which pertain in state or Federal courts.

§ 12.44 Jury trial.

(a) A jury trial shall be held if:

(1) Requested by either party in a civil case; or

(2) Requested by the defendant in a criminal case where imprisonment is a possible penalty for the offense charged.

(b) A list of eligible jurors shall be prepared and maintained by the Project Officer or his representative. Any person over the age of 21 years, not subject to judicial restraint by any court, and who resides within the former Joint Use Area may be listed as an eligible juror. Jurors shall be compensated at a rate recommended by the Judge and approved by the Project Officer.

(c) A jury shall consist of seven persons chosen at random by the presiding Judge from the persons listed as eligible to serve as jurors.

(d) Each party shall have the right to challenge an unlimited number of jurors for cause on the basis of lack of qualifications, partiality, or other acceptable reason. Whether or not cause exists shall be determined by the Judge in all instances. In addition, each party shall have the right to a maximum of three peremptory challenges for jurors, for which no reasons need be given and which the judge may not refuse to grant.

(e) The judge shall instruct the jury with regard to the applicable law and the jury shall decide all questions of fact on the basis of that law.

(f) The jury shall deliberate in secret and return a verdict of guilty or not guilty. The judge shall render judgment in accordance with the jury verdict.

(g) A jury may render a verdict by a vote of 6 to 1 in criminal cases.

§ 12.45 Contempt of Court.

(a) The Judges of the Courts may rule a person in contempt of court if he willfully and unjustifiably, dis-

rupts, obstructs, or otherwise interferes with the due and orderly course of proceeding in the courtroom, after being advised by the Court to cease.

(b) All rulings of, and sentences for, contempt shall be announced immediately after the acts of contempt occur.

(c) A person found in contempt of court may be sentenced to imprisonment for a period not to exceed 30 days or to pay a fine not to exceed $150, or both.

§ 12.46 Commitments.

(a) No person shall be detained, jailed, or imprisoned for more than 36 hours pursuant to an arrest unless there be issued an express or conditional commitment order signed by a duly qualified Judge of a Trial Court. Any person arrested on a Friday, Saturday, or a day before a legal holiday who does not provide bail may be held in custody pending arraignment until noon of the next regular business day of the Trial Court.

(b) There shall be issued for each person held for trial a temporary commitment order and, for each person held after sentencing, a final commitment order.

§ 12.47 Right of appeal.

(a) Any party to a case, other than the prosecution in a case, who is aggrieved by a final order or final judgment of a Trial Court, shall have the right to appeal to the Court of Appeals.

(b) The appealing party shall file with the Clerk of the Court a notice of appeal along with a filing fee of $5 within ten (10) days after the entry of the final order or final judgment from which appeal is taken. The filing fee may be waived in the appeal of a conviction if the defendant files an affidavit swearing that he is without funds to pay the filing fee. If the Court of Appeals finds that the appellant is without funds to pay the filing fee, it shall order that the fee be permanently waived.

(c) If the Court of Appeals finds that any or a combination of the following has occurred, it shall order the judgment or order reversed or may remand the case for retrial:

(1) Irregularities in the proceedings or conduct by the jury, adverse party, or his counsel prejudicial to the appellant;

(2) Any ruling, order, or abuse of discretion which may have prevented a fair trial;

(3) Newly discovered evidence which could not, with reasonable diligence, have been produced at trial;

(4) Insufficient evidence to support the verdict;

(5) Any error of law occurring at the trial prejudicial to the appellant; or

(6) Any other reason which would warrant reversal by a court when reviewing a similar appeal.

(d) If the Court of Appeals finds that reversal under paragraph (c) of this section is unwarranted, it shall affirm the judgment or order appeal from; no further appeal under this Code shall thereafter be permitted.

§ 12.48 Cooperation by Federal employees.

(a) No field employee of the Bureau of Indian Affairs shall obstruct, interfere with, or control the functions of the Courts or influence such functions in any manner except as permitted by the regulations or in response to a request for advice or information from the Court.

(b) Employees of the Bureau of Indian Affairs, particularly those engaged in social, health, or education services, shall assist the courts upon their request in the preparation and presentation of the facts in the case and in the proper treatment of individual offenders.

Subpart I—Sentencing

§ 12.49 Nature of sentences.

Except as otherwise provided hereunder, a person found guilty of violating a provision of the Code, may be sentenced to the penalty provided in such offense. Sentences shall be imposed without unreasonable delay and shall not exceed the maximum penalties provided by law. The penalties provided for the offense are maximum penalties and should be imposed only in extreme cases.

§ 12.50 Sentences of imprisonment.

(a) A person sentenced to imprisonment may work for the benefit of the Hopi or Navajo Tribes or for the benefit of the former Joint Use Area. Any work performed shall reduce the sentence at the rate of two days of incarceration for each day of work performed. "Day of work" shall mean at least four hours of work performed in any 24-hour period. Any work performed shall be under the supervision of any person authorized by the Court.

(b) Any sentence of imprisonment shall be reduced by any time spent in jail before judgment was entered.

§ 12.51 Payment of fines.

(a) Any person sentenced to pay a fine shall pay such fine in cash or money order to the Clerk of the Court who shall issue a receipt therefor.

(b) If the full amount of the fine cannot immediately be paid, the Court may provide for the payment of such fine in installments.

§ 12.52 Failure or inability to pay fines.

(a) A sentence of imprisonment shall not be imposed upon any indigent person in the form of an alternative to a fine, i.e. "dollars or days."

(b) Any person sentenced to pay a fine shall not be imprisoned to work off such fine if, by reason of indigency, he is unable to pay the fine imposed.

(c) Any person who is presently able to pay a fine or an installment of a fine and who willfully refuses to do so may be ordered imprisoned for, or allowed to work off, the unpaid amount of the fine at the rate of $5.00 per day for each day in jail or $10.00 for a day of work performed.

§ 12.53 Commutation of sentence.

The Judge of the sentencing Court may, at any time that one-half or more of an original sentence of imprisonment has been served, commute such sentence to a lesser period upon proof that the person sentenced served without misconduct.

§ 12.54 Suspension of sentence; probation.

(a) The Judge of the sentencing Court may suspend any sentence upon condition that the defendant comply with such reasonable terms and conditions as the Court deems necessary.

(b) When considering suspending any sentence, the Court shall consider the prior record of the defendant, his background, character, financial condition, family and work obligations, the circumstances of the offense, and attempts at restitution.

§ 12.55 Violation of suspended sentence.

(a) Any person accused of violating the terms or conditions of his suspended sentence shall be afforded a hearing before the sentencing Court to determine the truth of the accusations.

(b) Where, by a preponderance of testimony, a person is found to have violated the terms or conditions of his suspended sentence, such person may be ordered to serve his original sentence or any portion thereof.

§ 12.56 Disposition of fines.

(a) All money fines imposed for the commission of an offense shall be in the nature of an assessment of the payment of designated Court expenses. Such expenses may include the payment of fees to jurors and witnesses answering a subpoena. All fines assessed and collected shall be paid over to the Project Officer or his disbursing agent to be deposited in a special account labeled "Special Deposit, Court Funds" to the disbursing agent's credit in the Treasury of the United States. The disbursing agent shall withdraw such funds in accordance with existing Federal regulations upon the order of the Clerk of the Court signed by a Judge of the Court for payment of special fees to the jurors and witnesses. The disbursing agent and the Clerk of the Court shall keep an accounting of all such deposits and withdrawals for the inspection of any interested person.

(b) Whenever such funds shall exceed the amount necessary for the payment of court expenses hereinbefore mentioned, the Project Officer shall designate further expenses of

the Court which shall be paid by these funds.

§ 12.57 Civil remedies not precluded.

The imposition or suspension of any penalty, on condition of restitution to one whose person or property has been injured, for the commission of any offense under this Code shall not preclude an application for any civil remedy for such injuries.

Subparts J—L [Reserved]

Subpart M—Code of Offenses

§ 12.58 Definitions.

In this subpart, unless the context otherwise requires:

(a) "Adult" shall mean a person who is 18 years of age or older.

(b) "Bodily injury" shall mean impairment of physical condition or substantial pain.

(c) "Deadly weapon" shall mean any instrument used in such a manner as to render it capable of causing death or serious bodily injury.

(d) "Serious bodily injury" shall mean physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.

(e) "Person" shall mean a person as defined in § 12.3(e).

(f) "Range management personnel" shall mean the Project Officer or his representatives.

§ 12.59 Aiding and abetting.

(a) When an act is declared an offense under this Code, and no punishment for counseling or aiding in the commission of the act is expressly prescribed by law, a person who counsels or aids another in the commission of the act is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed the maximum penalty for the offense for which he aided and abetted.

§ 12.60 Assault.

(a) A person who unlawfully attempts or threatens to cause bodily injury to another is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed twenty (20) days or to pay a fine not to exceed fifty ($50) dollars, or both.

§ 12.61 Battery.

(a) A person who:

(1) Willfully and unlawfully uses force or violence upon the person of another; or

(2) By threatening force or violence, causes another to harm himself; or

(3) Recklessly causes physical injury to another is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and eighty (180) days or to pay a fine not to exceed Five Hundred ($500) dollars, or both.

§ 12.62 Bribery—giving.

(a) A person who gives or offers to give to another person money, property or other thing of value with intent to influence a public servant in the discharge of his public duties is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and eighty (180) days or to pay a fine not to exceed Five Hundred ($500) dollars, or both.

§ 12.63 Bribery—receiving.

(a) A public servant who asks, receives, or offers to receive from another, money, property, or other thing of value, with intent or upon a promise to be influenced in the discharge of his public duties, is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and eighty (180) days or to pay a fine not to exceed Five Hundred ($500) dollars, or both.

§ 12.64 Bribery—soliciting.

(a) A person who obtains or seeks to obtain money, property, or other thing of value, upon a claim or representation that he can or will improperly influence the action of a public servant in the discharge of his public duties is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and eighty (180) days or to pay a fine not to exceed Five Hundred ($500) dollars, or both.

§ 12.65 Carrying a concealed weapon.

(a) A person who has concealed on or about his person a dangerous weapon is guilty of an offense.

(b) A dangerous weapon as used in paragraph (a) of this section shall include any:

(1) Airgun, blowgun, explosive device, pistol, or other firearm;

(2) Bayonet, dagger, switchblade, bowie knife, or other kind of knife;

(3) Sling shot, club, blackjack, or chain;

(4) Sword, sword cane, or spear;

(5) Metal knuckles; or

(6) Any other instrument capable of lethal use, possessed under circumstances not appropriate for lawful use.

(c) A folded pocket knife with a blade 3″ or less is not considered a dangerous weapon, except a switchblade.

(d) Paragraph (a) shall not apply to any person authorized by the tribal, state, Federal governments, or subdivisions thereof to carry such weapons.

(e) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed sixty (60) days or to pay a fine not to exceed Sixty ($60) dollars, or both.

(f) Any weapons concealed in violation of this section shall be subject to seizure and forfeiture as provided in § 12.31 of Subpart H.

§ 12.66 Conspiracy.

(a) A person is guilty of conspiracy if, with the intent to commit or to have another person commit any action constituting an offense under this Code, he conspires with one or more persons to engage in or cause the commission of such action.

(b) No agreement amounts to a conspiracy unless some act besides such agreement is done to effectuate the object thereof by one or more of the parties to the agreement.

(c) Upon a trial for conspiracy, the defendant shall not be convicted unless one or more overt acts are expressly alleged in the complaint, nor unless one of the acts alleged is proved, but other overt acts not alleged may be given in evidence.

(d) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed 180 days (6 months) or to pay a fine not to exceed $500, or both.

§ 12.67 Criminal negligence.

(a) A person who:

(1) Recklessly endangers the safety of another; or

(2) Acts with careless disregard for the safety of another is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed sixty (60) days or to pay a fine not to exceed sixty ($60) dollars, or both.

§ 12.68 Criminal trespass.

(a) A person who:

(1) Enters or remains upon any public property for an unlawful purpose; or

(2) Without good cause enters, remains upon, or traverses private lands or other property not his own, where notice against trespassing has been reasonably communicated by the owner or occupant is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed thirty (30) days or to pay a fine not to exceed Thirty ($30) dollars, or both.

§ 12.69 Cruelty to animals.

(a) A person who wantonly or maliciously inflicts pain, suffering, or death upon any animal is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed thirty (30) days or to pay a fine not to exceed Thirty ($30) dollars, or both.

§ 12.70 Disobedience to a lawful order of the Court.

(a) A person who willfully disobeys any order, subpoena, warrant, or command duly issued by a Joint Use Court or any Officer thereof is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed fifty (50) days or to pay a fine not to exceed Fifty ($50) dollars, or both.

§ 12.71 Disorderly conduct.

(a) A person who:

(1) Engages in fighting or provokes a fight;

(2) Disrupts any lawful public or religious meeting;

(3) Causes unreasonable noise; or

(4) Uses language or gestures knowing them to be obscene or likely to provoke a fight is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed sixty (60) days or to pay a fine not to exceed Sixty ($60) dollars, or both.

§ 12.72 Escape.

(a) A person who willfully escapes, attempts to escape, or assists in an escape, from lawful custody, is guilty of an offense.

(b) "Lawful custody" shall mean confinement by court order or actual or constructive restraint by a police officer pursuant to an arrest.

(c) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and eighty (180) days or to pay a fine not to exceed One Hundred and Eighty ($180) dollars, or both.

§ 12.73 Extortion.

(a) A person who compels or induces another person to deliver property to himself or to a third person by threatening that if the property is not delivered, the actor or another will:

(1) Cause physical injury to some person; or

(2) Cause damage to property; or

(3) Accuse some person of a crime or cause criminal charges to be instituted against some person; or

(4) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, or ridicule; or

(5) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(6) Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty in such manner as to affect some person adversely is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and eighty (180) days or to pay a fine not to exceed Five Hundred ($500) dollars, or both.

§ 12.74 Fraud.

(a) A person who obtains property:

(1) By willful misrepresentation of fact; or

(2) By falsely interpreting; or

(3) By failure to reveal facts which he knows should be revealed, with intent to defraud another of such property is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and eighty (180) days or to pay a fine not to exceed one hundred and eighty ($180) dollars, or both.

§ 12.75 Interfering with an officer.

(a) A person who willfully prevents or attempts to prevent a police officer from effecting an arrest or from otherwise discharging his official duty by:

(1) Creating a substantial risk of bodily harm to the officer or any other person; or

(2) Employing means of resistance which justify or require substantial force to overcome is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed sixty (60) days or to pay a fine not to exceed Sixty ($60) dollars, or both.

§ 12.76 Misusing property.

(a) A person who, without proper authority, knowingly uses or damages

any property not his own is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed twenty (20) days or to pay a fine not to exceed Twenty ($20) dollars, or both.

§ 12.77 Perjury.

(a) A person who knowingly makes a false statement while under oath, or who induces another to do so or who signs an affidavit knowing the same to be false, is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and eighty (180) days or to pay a fine not to exceed one hundred and eighty ($180) dollars, or both.

§ 12.78 Receiving stolen property.

(a) A person who buys, receives, conceals, or aids in concealing any property which he knows or should know has been obtained by theft, extortion, fraud or other means constituting an offense under the provisions of this Law and Order Code is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed sixty (60) days or to pay a fine not to exceed Sixty ($60) dollars, or both.

§ 12.79 Refusing to aid an officer.

(a) A person who willfully refuses to assist a police officer;

(1) In the lawful arrest of any person;

(2) In conveying a lawfully arrested person to the nearest place of confinement, when such assistance is reasonably requested, is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed fifty (50) days or to pay a fine not to exceed Fifty ($50) dollars, or both.

§ 12.80 Theft.

(a) A person, who unlawfully takes or exercises control over property whether or not possession was originally obtained with consent of the owner, with the intent of permanently depriving the owner of the value or use of the property for the benefit of himself or another is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and eighty (180) days or to pay a fine not to exceed Five Hundred ($500) dollars, or both.

§ 12.81 Unlawful burning.

(a) A person who:

(1) Willfully and unlawfully causes or attempts to cause damage to any Federal Government property by fire or explosion; or

(2) Negligently causes damage to any property by fire or explosion; or

(3) Sets fire to any forest, brush, or grasslands, or sets a campfire, with careless disregard for the spread or escape of such fire, is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and twenty (120) days or to pay a fine not to exceed One Hundred and Twenty ($120) dollars, or both.

§ 12.82 Interfering with livestock reduction, range restoration or surveying, monumenting and fencing.

(a) Any person who: (1) Willfully impedes Bureau of Indian Affairs personnel or its agents in the execution of their duties involving the gathering of and movement from the former Joint Use Area range of trespassing livestock; or

(2) Willfully and substantially interferes with the Bureau or its agents in the execution of their duties involving restoration of the range of the former Joint Use Area; or

(3) Willfully and substantially interferes with Interior Department personnel or its agents in surveying, monumenting or fencing the boundary partitioned to the Navajo and Hopi Tribes under the Settlement Act or any management or range units within the former Joint Use Area, shall be guilty of a crime.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and twenty (120) days or to

pay a fine not to exceed One Hundred and Twenty ($120) dollars, or both.

Subpart N—Land; Livestock and Area Regulation Offenses

§ 12.83 Branding livestock of another.

(a) A person who:

(1) Willfully brands or marks an animal with a brand or mark other than the recorded brand of the owner of the animal; or

(2) Willfully alters or obliterates any brand or mark on any animal not his own with intent to convert the animal to his or some third person's use without the consent of the owner is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed one hundred and eighty (180) days or to pay a fine not to exceed Five Hundred ($500) dollars, or both.

§ 12.84 Failure to control livestock diseases and parasites.

(a) A person who willfully refuses to dip or treat any livestock under his ownership or control in accordance with orders or directions initiated by authorized range management personnel of the former Joint Use Area is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed ninety (90) days or to pay a fine not to exceed One Hundred ($100) dollars, or both.

§ 12.85 Grazing, introduction without a permit.

(a) A person who:

(1) Knowingly permits livestock under his ownership or control to graze upon lands within the former Joint Use Area; or

(2) Willfully introduces or causes the introduction of any livestock into unalloted or unallocated lands within the former Joint Use Area without a valid permit issued by authorized range management personnel is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed ninety (90) days or to pay a fine not to exceed One Hundred ($100) dollars, or both.

§ 12.86 Livestock roundups.

(a) A person who willfully hinders, harasses, obstructs, or otherwise interferes with persons conducting roundups authorized by the Project Officer is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed ninety (90) days or to pay a fine not to exceed One Hundred ($100) dollars, or both.

§ 12.87 Making false reports of stock owned.

(a) A person who:

(1) Knowingly makes a false report as to the total number of stock under his ownership or control; or

(2) Willfully refuses to report the number of stock under his ownership or control, when required or requested by authorized range management personnel, is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed ninety (90) days or to pay a fine not to exceed One Hundred ($100) dollars, or both.

§ 12.88 Refusal to brand or mark livestock.

(a) A person, who willfully refuses to brand or mark any livestock under his ownership or control when required or requested by authorized range management personnel, is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed ninety (90) days or to pay a fine not to exceed One Hundred ($100) dollars, or both.

§ 12.89 Refusal to dispose of cull or infected animals.

(a) A person, who willfully refuses to dispose of or remove any cull or infected animals designated for disposal or removal by authorized range management personnel, is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed ninety (90) days or to pay a fine not to exceed One Hundred ($100) dollars, or both.

§ 12.90 Trespass—inter-district.

(a) A person, who knowingly permits any livestock under his ownership or control to occupy or graze upon land reserved by range management personnel for demonstration, administration or agricultural purposes, is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed ninety (90) days or to pay a fine not to exceed One Hundred ($100) dollars, or both.

§ 12.91 Unauthorized use of range.

(a) A person who willfully:

(1) Grazes livestock under his ownership or control in the former Joint Use Area in excess of the number allowed under his grazing permit; or

(2) Refuses to graze livestock under his ownership or control in accordance with plans made public by authorized range management personnel is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed ninety (90) days or to pay a fine not to exceed One Hundred ($100) dollars, or both.

§ 12.92 Unauthorized fencing.

(a) A person who fences any land knowing such fencing is not authorized by range management personnel, is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed ninety (90) days or to pay a fine not to exceed One Hundred ($100) dollars, or both.

§ 12.93 Violation of regulations.

(a) A person who willfully:

(1) Violates any provision of 25 CFR Part 153; or

(2) Violates or refuses to comply with lawful orders and directions issued by the Secretary of the Interior or his representatives for the purpose of regulating the use or occupancy of the former Joint Use Area is guilty of an offense.

(b) A person found guilty under this section may be sentenced to imprisonment for a period not to exceed ninety (90) days or to pay a fine not to exceed One Hundred ($100) dollars, or both.

§ 12.94 Other actions not precluded.

The arrest, conviction, or sentencing of any person for violating any provision contained in this part shall not preclude impoundment, seizure, or other authorized action taken by range management personnel for the enforcement of regulations for, or management of, the former Joint Use Area.

Subparts O—Q [Reserved]

Subpart R—Other Provisions

§ 12.95 Indian Police.

The Project Officer shall be recognized as commander of the Indian police of the former Joint Use Area and shall be held responsible for the general efficiency and conduct of the members thereof. It shall be the duty of the Project Officer or his duly authorized representative to keep himself informed as to the efficiency of the Indian police in the discharge of their duties, to subject them to regular inspection, to inform them of their duties, and keep a strict accounting of the equipment issued them in connection with their official duties. It shall be the duty of the Project Officer to detail such Indian Policemen as may be necessary to carry out the orders of the Court and to preserve order during court sessions. The Project Officer shall investigate all reports and charges of misconduct on the part of Indian Policemen and shall exercise such proper disciplinary measures as may be consistent with existing regulations.

§ 12.96 Police commissioners.

The Project Officer may, with the approval of the Commissioner of Indian Affairs, designate as police commissioner any qualified person. Such Police Commissioner shall obey the orders of the Project Officer and see that the orders of the Court are properly carried out. The police commissioner shall be responsible to the Project Officer for the conduct and efficiency of the Indian Police under his direction and shall give such instruction and advice to them as may be necessary. The police commissioner shall

also report to the Project Officer all violations of law or regulation and any misconduct of any member of the Indian Police.

§ 12.97 Police training.

It shall be the duty of the Project Officer to maintain from time to time as circumstances require and permit classes of instruction for the Indian Policemen. Such classes shall familiarize the Policemen with the manner of making searches and arrests, the proper and humane handling of prisoners, the keeping of records of offenses and the duties of the police in relation thereto, and other subjects of importance for efficient police duty. It shall further be the purpose of the classes to consider methods of preventing crime and of securing cooperation with Indian communities in establishing better social relations.

§ 12.98 Indian Policemen.

(a) The Project Officer may, with the approval of the Commissioner of Indian Affairs, employ and appoint Indians as Indian Police whose qualifications shall be as follows:

(1) A candidate must be in sound physical condition and of sufficient size and strength to perform the duties required.

(2) He must be possessed of courage, self-reliance, intelligence, and a high sense of loyalty and duty.

(3) He must never have been convicted of a felony, nor have been convicted of any misdemeanor for a period of one year prior to appointment.

(b) The duties of an Indian policeman shall be:

(1) To obey promptly all orders of the police commissioner or the Court when assigned to that duty;

(2) To lend assistance to brother officers;

(3) To report and investigate all violations of any law or regulation coming to his notice or reported for attention;

(4) To arrest all persons observed violating the laws and regulations for which he is held responsible;

(5) To inform himself as to the laws and regulations applicable to the jurisdiction where employed and as to the laws of arrest;

(6) To prevent violations of the laws and regulations;

(7) To report to his superior officers all accidents, births, deaths, or other events or impending events of importance;

(8) To abstain from the use of intoxicants or narcotics and to refrain from engaging in any act which would reflect discredit upon the police department;

(9) To refrain from the use of profane, insolent, or vulgar language;

(10) To use no unnecessary force or violence in making an arrest, search, or seizure;

(11) To keep all equipment furnished by the government in reasonable repair and order;

(12) To report the loss of any and all property issued by the government in connection with official duties;

(13) To collect and issue receipts for bail.

§ 12.99 Dismissal.

The Project Officer may remove any Indian Policeman for any noncompliance with the duties and requirements as set out in the police duty guidelines or for neglect of duty.

§ 12.100 Return of equipment.

Upon the resignation, death, or discharge of any member of the Indian police, all articles or property issued him in connection with his official duties must be returned to the Project Officer or his representative.

PART 13—TRIBAL REASSUMPTION OF JURISDICTION OVER CHILD CUSTODY PROCEEDINGS

Subpart A—Purpose

Sec.
13.1 Purpose.

Subpart B—Reassumption

13.11 Contents of reassumption petitions.
13.12 Criteria for approval of reassumption petitions.
13.13 Technical assistance prior to petitioning.
13.14 Secretarial review procedure.
13.15 Administrative appeals.
13.16 Technical assistance after disapproval.

AUTHORITY: 25 U.S.C. 1952.

SOURCE: 44 FR 45095, July 31, 1979, unless otherwise noted.

Subpart A—Purpose

§ 13.1 Purpose.

(a) The regulations of this part establish the procedures by which an Indian tribe that occupies a reservation as defined in 25 U.S.C. § 1903(10) over which a state asserts any jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588) Pub. L. 83-280, or pursuant to any other federal law (including any special federal law applicable only to a tribe or tribes in Oklahoma), may reassume jurisdiction over Indian child custody proceedings as authorized by the Indian Child Welfare Act, Pub. L. 95-608, 92 Stat. 3069, 25 U.S.C. § 1918.

(b) On some reservations there are disputes concerning whether certain federal statutes have subjected Indian child custody proceedings to state jurisdiction or whether any such jurisdiction conferred on a state is exclusive of tribal jurisdiction. Tribes located on those reservations may wish to exercise exclusive jurisdiction or other jurisdiction currently exercised by the state without the necessity of engaging in protracted litigation. The procedures in this part also permit such tribes to secure unquestioned exclusive, concurrent or partial jurisdiction over Indian child custody matters without relinquishing their claim that no federal statute had ever deprived them of that jurisdiction.

(c) Some tribes may wish to join together in a consortium to establish a single entity that will exercise jurisdiction over all their members located on the reservations of tribes participating in the consortium. These regulations also provide a procedure by which tribes may reassume jurisdiction through such a consortium.

(d) These regulations also provide for limited reassumptions including jurisdiction restricted to cases transferred from state courts under 25 U.S.C. § 1911(b) and jurisdiction over limited geographical areas.

(e) Unless the petition for reassumption specifically states otherwise, where a tribe reassumes jurisdiction over the reservation it occupies, any land or community occupied by that tribe which subsequently acquires the status of reservation as defined in 25 U.S.C. § 1903(10) also becomes subject to tribal jurisdiction over Indian child custody matters.

Subpart B—Reassumption

§ 13.11 Contents of reassumption petitions.

(a) Each petition to reassume jurisdiction over Indian child custody proceedings and the accompanying plan shall contain, where available, the following information in sufficient detail to permit the Secretary to determine whether reassumption is feasible:

(1) Full name, address and telephone number of the petitioning tribe or tribes.

(2) A resolution by the tribal governing body supporting the petition and plan. If the territory involved is occupied by more than one tribe and jurisdiction is to be reassumed over all Indians residing in the territory, the governing body of each tribe involved must adopt such a resolution. A tribe that shares territory with another tribe or tribes may reassume jurisdiction only over its own members without obtaining the consent of the other tribe or tribes. Where a group of tribes form a consortium to reassume jurisdiction, the governing body of each participating tribe must submit a resolution.

(3) The proposed date on which jurisdiction would be reassumed.

(4) Estimated total number of members in the petitioning tribe or tribes, together with an explanation of how the number was estimated.

(5) Current criteria for membership in the tribe or tribes.

(6) Explanation of procedure by which a participant in an Indian child custody proceeding may determine whether a particular individual is a member of a petitioning tribe.

(7) Citation to provision in tribal constitution or similar governing document, if any, that authorizes the tribal governing body to exercise jurisdiction over Indian child custody matters.

(8) Description of the tribal court as defined in 25 U.S.C. § 1903(12) that

has been or will be established to exercise jurisdiction over Indian child custody matters. The description shall include an organization chart and budget for the court. The source and amount of non-tribal funds that will be used to fund the court shall be identified. Funds that will become available only when the tribe reassumes jurisdiction may be included.

(9) Copy of any tribal ordinances or tribal court rules establishing procedures or rules for the exercise of jurisdiction over child custody matters.

(10) Description of child and family support services that will be available to the tribe or tribes when jurisdiction reassumed. Such services include any resource to maintain family stability or provide support for an Indian child in the absence of a family—regardless of whether or not they are the type of services traditionally employed by social services agencies. The description shall include not only those resources of the tribe itself, but also any state or federal resources that will continue to be available after reassumption of jurisdiction.

(11) Estimate of the number of child custody cases expected during a year together with an explanation of how the number was estimated.

(12) Copy of any tribal agreements with states, other tribes or non-Indian local governments relating to child custody matters.

(b) If the petition is for jurisdiction other than transferral jurisdiction under 25 U.S.C. 1911(b), the following information shall also be included in the petition and plan:

(1) Citation of the statute or statutes upon which the state has based its assertion of jurisdiction over Indian child custody matters.

(2) Clear and definite description of the territory over which jurisdiction will be reassumed together with a statement of the size of the territory in square miles.

(3) If a statute upon which the state bases its assertion of jurisdiction is a surplus land statute, a clear and definite description of the reservation boundaries that will be reestablished for purposes of the Indian Child Welfare Act.

(4) Estimated total number of Indian children residing in the affected territory together with an explanation of how the number was estimated.

§ 13.12 Criteria for approval of reassumption petitions.

(a) The Assistant Secretary—Indian Affairs shall approve a tribal petition to reassume jurisdiction over Indian child custody matters if:

(1) Any reservation, as defined in 25 U.S.C. 1903(10), presently affected by the petition is presently occupied by the petitioning tribe or tribes;

(2) The constitution or other governing document, if any, of the petitioning tribe or tribes authorizes the tribal governing body or bodies to exercise jurisdiction over Indian child custody matters;

(3) The information and documents required by § 13.11 of this part have been provided;

(4) A tribal court, as defined in 25 U.S.C. 1903(12), has been established or will be established before reassumption and that tribal court will be able to exercise jurisdiction over Indian child custody matters in a manner that meets the requirements of the Indian Civil Rights Act, 25 U.S.C. 1302;

(5) Child care services sufficient to meet the needs of most children the tribal court finds must be removed from parental custody are available or will be available at the time of reassumption of jurisdiction; and

(6) The tribe or tribes have established a procedure for clearly identifying persons who will be subject to the jurisdiction of the tribe or tribes upon reassumption of jurisdiction.

(b) If the technical assistance provided by the Bureau to the tribe to correct any deficiency which the Assistant Secretary—Indian Affairs has identified as a basis for disapproving a petition for reassumption of exclusive jurisdiction has proved unsuccessful in eliminating entirely such problem, the Bureau, at the request of the tribe, shall assist the tribe to assert whatever partial jurisdiction as provided in 25 U.S.C. 1918(b) that is feasible and desired by the tribe. In the alternative, the Bureau, if requested by the concerned tribe, shall assist the tribe

to enter into agreements with a state or states regarding the care and custody of Indian children and jurisdiction over Indian child custody proceedings, including agreements which may provide for the orderly transfer of jurisdiction to the tribe on a case-by-case basis or agreements which provide for concurrent jurisdiction between the state and the Indian tribe.

§ 13.13 Technical assistance prior to petitioning.

(a) Upon the request of a tribe desiring to reassume jurisdiction over Indian child custody matters, Bureau agency and Area Offices shall provide technical assistance and make available any pertinent documents, records, maps or reports in the Bureau's possession to enable the tribe to meet the requirements for Secretarial approval of the petition.

(b) Upon the request of such a tribe, to the extent funds are available, the Bureau may provide funding under the procedures established under 25 CFR 23.22 to assist the tribe in developing the tribal court and child care services that will be needed when jurisdiction is reassumed.

§ 13.14 Secretarial review procedure.

(a) Upon receipt of the petition, the Assistant Secretary—Indian Affairs shall cause to be published in the FEDERAL REGISTER a notice stating that the petition has been received and is under review and that it may be inspected and copied at the Bureau agency office that serves the petitioning tribe or tribes.

(1) No final action shall be taken until 45 days after the petition has been received.

(2) Notice that a petition has been disapproved shall be published in the FEDERAL REGISTER no later than 75 days after the petition has been received.

(3) Notice that a petition has been approved shall be published on a date requested by the petitioning tribe or within 75 days after the petition has been received—whichever is later.

(b) Notice of approval shall include a clear and definite description of the territory presently subject to the reassumption of jurisdiction and shall state the date on which the reassumption becomes effective. A copy of the notice shall immediately be sent to the petitioning tribe and to the attorney general, governor and highest court of the affected state or states.

(c) Reasons for disapproval of a petition shall be sent immediately to the petitioning tribe or tribes.

(d) When a petition has been disapproved a tribe or tribes may repetition after taking action to overcome the deficiencies of the first petition.

§ 13.15 Administrative appeals.

The decision of the Assistant Secretary—Indian Affairs may be appealed under procedures established in 43 CFR 4.350–4.369.

§ 13.16 Technical assistance after disapproval.

If a petition is disapproved, the Bureau shall immediately offer technical assistance to the tribal governing body for the purpose of overcoming the defect in the petition or plan that resulted in the disapproval.

SUBCHAPTER C—PROBATE

PART 15—DETERMINATION OF HEIRS AND APPROVAL OF WILLS, EXCEPT AS TO MEMBERS OF THE FIVE CIVILIZED TRIBES AND OSAGE INDIANS

§ 15.1 Cross reference.

For special rules applicable to proceedings in Indian Probate (Determination of Heirs and Approval of Wills, Except as to Members of the Five Civilized Tribes and Osage Indians), including hearings, and appeals relating to such matters within the jurisdiction of the Board of Indian Appeals, Office of Hearings and Appeals, see Subpart D of Part 4 of Subtitle A—Office of the Secretary of the Interior, of Title 43 of the Code of Federal Regulations, Subpart A of Part 4 and all of the general rules in Subpart B of Part 4, not inconsistent with the special rules in Subpart D of Part 4 are also applicable to such Indian probate proceedings.

(Secs. 1, 2, 36 Stat. 855, as amended, 856, as amended, sec. 1, 38 Stat. 588, 42 Stat. 1185, as amended, secs. 1, 2, 56 Stat. 1021, 1022; 25 U.S.C. 372, 373, 374, 373a, 373b)

[36 FR 7184, Apr. 15, 1971]

PART 16—ESTATES OF INDIANS OF THE FIVE CIVILIZED TRIBES

Sec.

16.1 Definitions.
16.2 Scope of regulations.
16.3 Legal representation in State courts.
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16.7 Performance of Federal functions by successor State courts.
16.8 Summary distribution of small liquid estates.
16.9 Escheat of estates of decedents.

AUTHORITY: 5 U.S.C. 301 (Interprets or applies Act of Apr. 26, 1906, ch. 1876, 34 Stat. 137, see 25 U.S.C. 355nt (1970); Act of May 27, 1908, ch. 199, 35 Stat. 312, see 25 U.S.C. 355nt (1970); Act of June 14, 1918, ch. 101, 40 Stat. 606, 25 U.S.C. 355, 375 (1970); Act of Apr. 12, 1926, ch. 115, 44 Stat. 239, see 25 U.S.C. 355nt (1970); Act of June 26, 1936, ch. 831, 49 Stat. 1967, 25 U.S.C. 501-509 (1970); Act of Aug. 4, 1947, ch. 458, 61 Stat. 731, 25 U.S.C. 502 (1970) and see 25 U.S.C. 355nt (1970); Act of Aug. 12, 1953, ch. 409, 67 Stat. 558, 25 U.S.C. 375c (1970) and see 25 U.S.C. 355nt (1970); Act of Aug. 11, 1955, ch. 786, 69 Stat. 666, see 25 U.S.C. 355nt (1970); Act of Aug. 29, 1967, Pub. L. 90-76, 81 Stat. 177, 25 U.S.C. 786-788 (1970); and Act of May 7, 1970, Pub. L. 91-240, 84 Stat. 203, 25 U.S.C. 375d (1970)).

SOURCE: 37 FR 7082, Apr. 8, 1972, unless otherwise noted.

§ 16.1 Definitions.

(a) The term "Secretary" means the Secretary of the Interior and his authorized representatives.

(b) The term "Bureau" means the Bureau of Indian Affairs, acting through the Commissioner of Indian Affairs and his authorized representatives, including field officials who are responsible for matters affecting properties in which a restricted interest is owned by an Indian of the Five Civilized Tribes.

(c) The term "Field Solicitor" means the supervising attorney in charge of the field office of the Solicitor in Muskogee, Okla.

(d) The term "Indian of the Five Civilized Tribes" means an individual who is either an enrolled member of the Cherokee, Chickasaw, Choctaw, Creek, or Seminole Tribes of Oklahoma, or a descendant of an enrolled member thereof.

(e) The term "restricted interest" means an interest owned in real or personal property subject to restraints upon alienation imposed either by Federal statute or by administrative action authorized by Federal statute. Although this term includes property subject to restraints which may be removed by administrative action, its use in this part refers primarily to property subject to restraints which State courts have jurisdiction to remove in proceedings such as those specified in § 16.2.

§ 16.2 Scope of regulations.

The regulations in this part set forth procedures for discharging the responsibilities of the Secretary in connection with the performance by State

courts, as authorized by Federal statutes, of certain functions which affect properties in which a restricted interest is owned by an Indian of the Five Civilized Tribes. These State court functions pertain to such proceedings as guardianship, heirship determination, will probate, estate administration, conveyance approval, partition of real property, confirmation of title to real property, and appeal from action removing or failing to remove restrictions against alienation. In addition, the regulations in this part set forth procedures for discharging certain other responsibilities of the Secretary not necessarily involving State court functions, such as escheat of estates of deceased Indians of the Five Civilized Tribes.

§ 16.3 Legal representation in State courts.

The statutory duties of the Secretary to furnish legal advice to any Indian of the Five Civilized Tribes, and to represent such Indian in State courts, in matters affecting a restricted interest owned by such Indian, shall be performed by attorneys on the staff of the Solicitor, under the supervision of the Field Solicitor. Such advice and representation shall be undertaken to the extent that the Field Solicitor in his discretion shall consider necessary to discharge said duties, with due regard to the complexity of the legal action contemplated, the availability of staff attorneys for such purposes, the value and extent of the restricted interests involved, possible conflicts between Indians claiming to be owners of such interests, the preference of such owners concerning legal representation, the financial resources available to such owners, the extent to which such owners require similar legal services in connection with their unrestricted properties, and any other factor appropriate for consideration.

§ 16.4 Exchange of information within the Department.

To the extent that information may be useful in discharging the duties covered by the regulations in this part, the Bureau shall furnish to the Field Solicitor, either on a current basis or at periodic intervals, processes and notices received concerning court cases and information, as current and complete as may reasonably be obtainable, concerning the estate and status of an Indian of the Five Civilized Tribes for whom legal assistance should be rendered pursuant to the regulations in this part. Similarly, to the extent that such information may be useful for Bureau action or records, the Field Solicitor shall advise the Bureau of court proceedings, information received, and action taken in furnishing legal services pursuant to the regulations in this part.

§ 16.5 Acceptance and acknowledgment of service of process.

Service by the Field Solicitor or any other person of any process or notice, pursuant to any Federal statute which by its express terms is applicable to Indians of the Five Civilized Tribes, may be accepted and acknowledged by the Field Solicitor, or by any attorney authorized to perform the duties specified in § 16.3, on behalf of the Secretary and the Bureau, notwithstanding any specific designation in such statute of the official to be served (such as the Secretary, superintendent for the Five Civilized Tribes, Probate Attorney, etc.).

§ 16.6 Authority of attorneys in State court litigation.

Attorneys authorized to perform the duties specified in § 16.3 appearing in State court litigation in their official capacities are authorized to take such action as the Secretary could take if he were personally appearing in his official capacity as counsel therein, including but not limited to the filing or decision against filing of initial, responsive, or supplemental pleadings and appeals from adverse judgments, the exercise or decision against exercise of a preferential right to purchase property subject to sale, the removal or decision against removal of actions to Federal courts, and the waiver or decision against waiver of the failure to make timely service of process or notice.

§ 16.7 Performance of Federal functions by successor State courts.

All authority to perform functions relating to Indians of the Five Civilized Tribes which by express provisions of Federal statute had been conferred upon probate or county courts of Oklahoma before such county courts were abolished on January 12, 1969, has since that date been vested in the successor district courts of that State, and all rights of litigants continue undiminished in the successor forum, including the right to appeal from adverse decisions rendered therein to the successor appellate court.

(Interprets or applies Okla. Op. Atty. Gen. No. 68-381 (Dec. 20, 1968))

§ 16.8 Summary distribution of small liquid estates.

Where information, furnished by the Bureau pursuant to § 16.4 or otherwise obtained, reveals that the estate of a deceased Indian of the Five Civilized Tribes contains no restricted land but consists of a restricted interest in funds not exceeding $500 on deposit to the credit of the decedent, the Field Solicitor shall, in the absence of any final decree determining the heirs or legatees of the decedent, prepare and furnish to the Bureau a finding and order of distribution, based on affidavit or other proof of death and heirship or bequest, setting forth the facts of death and heirship or bequest and the amount payable from the estate to each person determined to be an heir or legatee of the decedent. The Field Solicitor shall mail to each person considered a possible claimant to any portion of the estate, as an heir or legatee or otherwise, a copy of the order with a notice that the order shall become final 30 days after the date of mailing thereof unless within that period the officer by whom the order was signed shall have received a written request for reconsideration of the order. After final action on any order has been taken by the Field Solicitor, the Bureau shall distribute the funds in the estate of the decedent in accordance with such final action, unless a timely appeal therefrom has been filed in accordance with Part 2 of this title.

§ 16.9 Escheat of estates of decedents.

Where information, furnished by the Bureau pursuant to § 16.4 or otherwise obtained, reveals that the estate of a deceased Indian of the Five Civilized Tribes, who has been dead 5 or more years after having died intestate without heirs, consists of restricted interests in lands or rents or profits therefrom, the Field Solicitor shall, in the absence of any final decree determining that the decedent died without heirs or devisees, prepare and furnish to the Bureau a finding and order of escheat, based on affidavit or other proof of intestate death without heirs, setting forth the restricted interests in lands or rents or profits therefrom which have by escheat vested in the tribe which allotted the lands. The Field Solicitor shall mail to each person considered a possible claimant to any portion of the estate, as an heir or devisee or otherwise, a copy of the order with a notice that the order shall become final 30 days after the date of mailing thereof unless within that period the officer by whom the order was signed shall have received a written request for reconsideration of the order. After final action on any order has been taken by the Field Solicitor, the Bureau shall cause a certified copy thereof to be filed in the land records of each county within which are located any escheated lands described therein and shall cause the tribe to be credited with any funds in said estate which arose from rents or profits from such lands, unless a timely appeal therefrom has been filed in accordance with Part 2 of this title.

PART 17—ACTION ON WILLS OF OSAGE INDIANS

Sec.

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Sec.
17.12 Approval.
17.13 Government employees as beneficiaries.
17.14 Appeals.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 22 FR 10530, Dec. 24, 1957, unless otherwise noted.

§ 17.1 Definitions.

When used in the regulations in this part the following words or terms shall have the meaning shown below:

(a) "Secretary" means the Secretary of the Interior.

(b) "Commissioner" means the Commissioner of Indian Affairs.

(c) "Superintendent" means the superintendent of the Osage Indian Agency.

(d) "Special attorney" means the special attorney for Osage Indians, or other legal officer designated by the Commissioner.

§ 17.2 Attorneys.

Interested parties may appear in person or by attorneys at law. Attorneys must file written authority to appear for their clients in the proceedings.

§ 17.3 Pleadings, notice and hearings.

(a) The petition for approval of the will of a deceased Osage Indian may be set down for hearing at a date not less than 30 days from the date the petition is filed. Hearings shall be conducted only after notice of the time and place of such hearings shall have been given by mail. The notice shall be mailed not less than 10 days preceding the date of the hearing and shall state that the special attorney will, at the time and place specified therein, take testimony to determine whether the will of the deceased Osage Indian shall be approved or disapproved. The notice shall list the presumptive heirs of the decedent and the beneficiaries under such will, and shall notify the attesting witnesses to be present and testify. It shall state that all persons interested in the estate of the decedent may be present at the hearing. The notice shall further state that the special attorney may, in his discretion, continue the hearing to another time or place to be announced at the original hearing.

(b) Any interested party desiring to contest approval of the will may, not less than 5 days before the date set for hearing, file written objections in triplicate, showing that a copy thereof was served upon attorneys for the proponent and other attorneys of record in the case. Such contestant shall clearly state the interest he takes under the will and, if a presumptive heir, the interest he would take under the Oklahoma law. The contestant shall further state specifically the ground on which his contest is based.

§ 17.4 Service on interested parties.

A copy of the notice of hearing shall be served by mail, at his last known place of residence, on each presumptive heir; each beneficiary under the will offered for consideration; and each attesting witness thereto. Such notice must be mailed not less than 10 days preceding the date set for the hearing.

§ 17.5 Minors represented at hearings.

Minor heirs at law, who by the terms of the will are devised a lesser interest in the estate than they would take by descent, of whose interests are challenged, shall, with the approval of the special attorney, be represented at the hearing by guardians ad litem. Such minors 14 years of age or over may indicate in writing their choice of guardians ad litem. If no such choice has been indicated on the date of the hearing, the special attorney shall make the selection and appointment.

§ 17.6 Examination of witness.

All testimony taken at the hearing shall be reduced to writing. Any interested party may cross-examine any witness. Attorneys and others will be required to adhere to the rules of evidence of the State of Oklahoma. If, in addition to oral testimony, affidavits or dispositions are introduced, they must be read, and any opposing claimant may require the presence of the affiant, if practicable, either at that or a subsequent hearing, and opportunity shall be given for cross-examination or for having counter interrogatories answered.

§ 17.7 Limiting number of witnesses.

When the evidence seems clear and conclusive, the special attorney may, in his discretion, limit the number of witnesses to be examined formally upon any matter.

§ 17.8 Supplemental hearing.

When it appears that a supplemental hearing is necessary to secure material evidence, such a hearing may be conducted after notice has been given to those persons on whom notice of the original hearing was served and to such other persons as the testimony taken at the original hearing indicates may have a possible interest in the estate.

§ 17.9 Briefs.

When there are two or more parties with conflicting interests, the party upon whom the burden of proof may fall may be allowed a reasonable time, not to exceed 30 days following the conclusion of the hearing, in which to file a brief or other statement of his contentions, showing service on opposing counsel or litigant. The latter shall then be allowed not to exceed 20 days in which to file an answer brief or statement, and his opponent shall have 10 days thereafter to file a reply brief or statement. Upon proper showing the special attorney may grant extensions of time. Each brief or statement shall be filed in duplicate.

§ 17.10 Record.

After the hearing or hearings on the will have been terminated the special attorney shall make up the record and transmit it with his recommendation to the superintendent. The record shall contain:

(a) Copy of notices mailed to the attesting witnesses and the interested parties.

(b) Proof of mailing of notices.

(c) The evidence received at the hearing or hearings.

(d) The original of the will or wills considered at the hearings.

(e) A copy of all the pleadings.

The record, except the original will, shall be a part of the permanent files of the Osage Agency.

§ 17.11 Inspection of wills and approval as to form during testator's lifetime.

When a will has been executed and filed with the superintendent during the lifetime of the testator, the will shall be considered by the special attorney who may endorse on such will "approved as to form." A will shall be held in absolute confidence and its contents shall not be divulged prior to the death of the testator.

§ 17.12 Approval.

After hearings have been concluded in conformity with this part the superintendent shall approve or disapprove the wills of deceased Osage Indians.

§ 17.13 Government employees as beneficiaries.

In considering the will of a deceased Osage Indian the superintendent may disapprove any will which names as a beneficiary thereunder a government employee who is not related to the testator by blood, or otherwise the natural object of the testator's bounty.

§ 17.14 Appeals.

(a) Notwithstanding the provisions in Part 2 of this chapter concerning appeals generally from administrative actions, any appeal from the action of the superintendent of approving or disapproving a will shall be taken to the Secretary. Upon the superintendent's final action of approval or disapproval of a will, he shall immediately notify by mail all attorneys appearing in the case, together with interested parties who are not represented by attorneys, of his decision and of their right to file an appeal.

(b) Any party desiring to appeal from the action of the superintendent shall, within 15 days after the date of the mailing of notice of the decision file with the superintendent a notice in writing of his intention to appeal to the Secretary, and shall, within 30 days after the mailing date of such notice by the superintendent, perfect his appeal to the Secretary by service of the appeal upon the superintendent who will transmit the entire record to the Secretary. If no notice of intention to appeal is given within 15 days, the superintendent's decision will be final.

(c) Upon the filing of notice with the superintendent of intention to appeal or the perfecting of an appeal by service upon the superintendent, at the same time similar notice and service shall be effected by the party taking an appeal upon opposing counsel or litigants, and a statement included in the appeal that this has been done. A party taking an appeal may, within the same 30-day period allowed for perfecting an appeal, file a brief or other written statement of his contentions, showing also service of that brief upon opposing counsel or litigants. Opposing counsel or litigants shall have 30 days from the date of the service of appellant's brief upon them in which to file an answer brief, copies of which also shall be served upon the appellant or opposing counsel and litigants. Except by special permission, no other briefs will be allowed on appeal.

[26 FR 10930, Nov. 22, 1961]

SUBCHAPTER D—SOCIAL WELFARE

PART 20—FINANCIAL ASSISTANCE AND SOCIAL SERVICES PROGRAM

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Subpart D—Hearings and Appeals

20.30 Hearings and appeals.

AUTHORITY: 25 U.S.C. 13, unless otherwise noted.

SOURCE: 42 FR 6568, Feb. 2, 1977, unless otherwise noted.

Subpart A—Definitions, Purpose and Policy

§ 20.1 Definitions.

(a) "Appeal" means a written request for correction of an action or decision claimed to violate a person's legal rights or privileges as provided in Part 2 of this chapter.

(b) "Applicant" means an individual or persons on whose behalf an application for assistance and/or services has been made under the part.

(c) "Application" means the process through which a request is made for assistance or services.

(d) "Area Director" means the Bureau official in charge of an Area Office.

(e) "Authorized representative" means a parent or other caretaker relative, conservator, legal guardian, foster parent, attorney, paralegal acting under the supervision of an attorney, friend or other spokesperson acting on behalf or representing the applicant or recipient.

(f) "Bureau" means the Bureau of Indian Affairs, United States Department of the Interior.

(g) "Child" means a person under the age of 18 or such other age of majority as may be established for purposes of parental support by tribal or state law (if any) applicable to the person at his or her residence, except that no person who has been emancipated by marriage shall be deemed a child.

(h) "Child welfare assistance" means financial assistance provided on behalf of an Indian child, or an Indian under age 22 if assistance was initiated before age 18, who requires placement in a foster home or specialized nonmedical care facility in accordance with standards of payments established by the State pursuant to the foster care program under Title IV of the Social Security Act (49 Stat. 620) or who has need of special services not available under general assistance.

(i) "Commissioner" means the Commissioner of Indian Affairs.

(j) "Designated representative" means an official of the Bureau designated by a Superintendent to hold a hearing as prescribed in § 20.30 and who has had no prior involvement in the proposed decision under § 20.12 and whose hearing decision under § 20.30 shall have the same force and effect as if rendered by the Superintendent.

(k) "Family and community services" means social services, including protective services, usually not including money payments, provided through the social work skills of casework, group work or community development to solve social problems involving children, adults or communities.

(l) "Foster care service" means those social services provided when an Indian person lives away from the family home.

(m) "General assistance" means financial assistance as determined by

the applicant's or recipient's need less resources.

(n) "Indian" means any person who is a member, or a one-fourth degree or more blood quantum descendant of a member of any Indian tribe.

(o) "Indian court" means Indian tribal court or court of Indian offenses.

(p) "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony, or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(q) "Miscellaneous assistance" means a financial payment made for burial services, to facilitate the provision of emergency food or disaster programs, or for other financial needs not defined in this part but related to assistance for needy Indians.

(r) "Near reservation" means those areas or communities adjacent or contiguous to reservations which are designated by the Commissioner upon recommendation of the local Bureau Superintendent, which recommendation shall be based upon consultation with the tribal governing body of those reservations, as locales appropriate for the extension of financial assistance and/or social services, on the basis of such general criteria as: (1) Number of Indian people native to the reservation residing in the area, (2) a written designation by the tribal governing body that members of their tribe and family members who are Indian residing in the area, are socially, culturally and economically affiliated with their tribe and reservation, (3) geographical proximity of the area to the reservation, and (4) administrative feasibility of providing an adequate level of services to the area. The Commissioner shall designate each area and publish the designations in the FEDERAL REGISTER.

(s) "Need" means the deficit between resources and money amounts necessary to meet the cost of basic items and/or special items by the applicant or recipient as established pursuant to the Social Security Act by the public welfare agency of the state in which the applicant or recipient resides and which shall be used by the Bureau in determining the amount of financial assistance to be provided to the applicant or recipient residing in that state.

(t) "Public assistance" means those programs of assistance provided under Title IV of the Social Security Act (49 Stat. 620), as amended.

(u) "Recipient" means an individual or persons who have been determined as eligible and are receiving financial assistance or services under this part.

(v) "Reservation" means any federally recognized Indian tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

(w) "Resources" means services or income available to an Indian person or family unless excluded by Federal statute for public assistance or Supplemental Security Income from being considered as income for the purpose of determining financial need.

(x) "Secretary" means the Secretary of the Interior.

(y) "Superintendent" means the Bureau official in charge of an agency office.

(z) "Supplemental Security Income" means those programs of assistance provided under Title XVI of the Social Security Act (49 Stat. 620), as amended.

(aa) "Traditional Indian country" means the State of Oklahoma except Oklahoma City and non-trust land in the city of Tulsa.

(bb) "Tribal governing body" means the recognized governing body of an Indian tribe.

(25 U.S.C. 2 and 9)

[42 FR 6568, Feb. 2, 1977, as amended at 43 FR 52228, Nov. 9, 1978]

§ 20.2 Purpose.

The regulations in this part govern the provision of general assistance, child welfare assistance, miscellaneous

assistance and family and community services to eligible Indians.

§ 20.3 Policy.

When assistance or services are not available or not being provided by state, local, or other agencies, general assistance, child welfare assistance, miscellaneous assistance and family and community services shall be provided for eligible Indians by the Bureau in a manner designed to promote personal and family unity and economic and social stability, working toward attainment of self-sufficiency.

Subpart B—Administrative Procedures

§ 20.10 Application for assistance or services.

(a) Written or oral applications by or on behalf of any individual or group will be accepted for assistance or services under this part. In addition to applications from persons desiring assistance or services, referrals will be accepted directly from relatives, interested individuals, social welfare agencies, law enforcement agencies, courts and others.

(b) Applications for assistance or services under this part shall be made to the Superintendent or an official representative. All applications for assistance shall ultimately be reduced to a written form. However, a written statement by an appropriate representative of the Bureau social services program as to why protective social services under § 20.24(b)(2) were provided may be accepted in lieu of a written appl ation.

§ 20.11 Secu ng information.

(a) The applicant will be the primary source of information regarding his circumstances for the purpose of determining eligibility and need. If it is necessary to secure information from other sources, the applicant will be asked to authorize the release of information. The applicant will be informed, in advance, of the kinds of information needed, the source to be used, and that the information obtained will be used only in connection with the application for assistance or services under this part or as otherwise required by law.

(b) Recipients shall be required to make timely and accurate reports of any change in circumstances which may affect their eligibility or the amount of financial assistance.

§ 20.12 Decision.

(a) Action on an applicat on for assistance shall consist of the following:

(1) The application shall be approved if the applicant meets the appropriate eligibility criteria set forth in Subpart C of this part for the type of assistance requested, and financial assistance may be retroactive, as appropriate, to the date of application.

(2) The application shall be denied if the applicant does not meet the appropriate eligibility criteria set forth in Subpart C of this part for the type of assistance requested.

(3) Action to approve or deny an application shall be made within 30 days of the date of the application, or if not the applicant shall be notified in writing of the reasons why such a decision cannot be made, but in no event shall any application be held pending beyond 45 days of the date of the application.

(b) As appropriate, other decision actions include the following:

(1) To increase or decrease the amount of recipient's financial assistance pursuant to the eligibility criteria set forth in Subpart C of this part.

(2) To suspend or terminate recipient's financial assistance pursuant to the eligibility criteria set forth in Subpart C of this part.

§ 20.13 Written notice of proposed decision.

Written notice of all proposed decisions shall be mailed or hand delivered to the applicant or recipient which clearly and completely advise of their legal rights to contest any adverse proposed decision as set forth in § 20.30 or under Part 2 of this chapter and shall further consist of the following:

(a) A statement of the action being taken, the effective date, and the reasons for the decision.

(b) If the action is to reduce, suspend, or terminate financial assistance to the recipient, the written notice

shall be provided to the recipient 20 days in advance of the proposed effective date.

(c) Shall advise the applicant or recipient of his right to request a hearing if dissatisfied with the proposed decision.

(d) Shall advise the applicant or recipient of his right to be represented by an authorized representative at no expense to the Bureau.

(e) Shall advise the applicant or recipient that failure to request a hearing within the 20 day period following the date of notice of proposed decision will cause the proposed decision to become final subject to appeal under Part 2 of this chapter, and that the decision will not be distrubed except for fraud or gross irregularity or where found by higher authority that failure to appeal on the part of the applicant or recipient would result in inequity or injustice to the parties.

§ 20.14 Adjusting incorrect payments.

(a) When the Bureau finds that an incorrect payment of financial assistance has been made to an individual or family, proper adjustment or recovery shall be required, based upon individual need as appropriate to the circumstances that resulted in an incorrect payment. However, prior to adjustment or recovery by the Bureau, the recipient shall be notified of the proposal to correct the payment and given an informal opportunity to resolve the matter. If an informal resolution cannot be attained the recipient is entitled to a written notice of decision, and a hearing if requested, in accordance with §§ 20.12, 20.13 and 20.30. Unless a hearing is requested or an appeal made, the proposed decision shall become final within 20 days after written notice is mailed or delivered to the recipient.

(b) Applicants and recipients who knowingly and willfully provide the Bureau with false, fictitious or fraudulent information are subject to prosecution under 18 U.S.C. 1001, which carries a fine of not more than $10,000 or imprisonment for not more than five years, or both.

Subpart C—Eligibility Conditions

§ 20.20 General.

(a) Basic eligibility conditions shall be:

(1) The applicant must be an Indian, except that in the States of Alaska and Oklahoma a one-fourth degree or more Indian or Native blood quantum will be an additional eligibility requirement; and

(2) The applicant must reside on a reservation; or

(3) The applicant must reside near reservation as specifically defined in § 20.1(r).

(b) The applicant must further meet the additional eligibility requirements for each of the specific programs of assistance or services as set forth in §§ 20.21 through 20.24 in order to be eligible for assistance or services under that program.

(c) Upon written request of an appropriate tribal governing body, the Commissioner may authorize assistance and services to Indians, not otherwise eligible in this part, who reside on a reservation or in near reservation designated areas, when necesary to prevent hardship in accordance with findings and exceptions published in the FEDERAL REGISTER.

§ 20.21 General assistance.

Indians meeting the requirements prescribed in § 20.20(a) shall be considered eligible for general assistance under this part: *Provided*, That:

(a) Their resources do not meet their need.

(b) They do not receive and are not eligible to receive public assistance or Supplemental Security Income payments and are not included in such payments made to others. However, otherwise eligible Indians may receive general assistance under this part upon application for and pending initial receipt of such payments.

(c) They reside in areas where comparable general assistance is not available or is not being provided to all residents on the same basis from a State, county or local public jurisdiction.

(d) They accept available employment which they are able and qualified to perform.

§ 20.22 Child welfare assistance.

An Indian child meeting the requirements prescribed in § 20.20(a) shall be considered eligible for child welfare assistance or services under this part. *Provided*, That:

(a) The child's legally responsible parent, guardian, or Indian court having jurisdiction:

(1) Requests such assistance in writing and is unable to provide necessary care and guidance for the child in his own home for other than financial reasons and is unable to meet the cost of foster care.

(2) Requests such assistance in writing and is unable to provide for the child's special needs which cannot be through other assistance programs including the Bureau's general assistance program.

(b) The child is not receiving and is not eligible to receive public assistance or Suplemental Security Income payments and is not included in such payments made to others. However, an otherwise eligible child may receive child welfare assistance under this part upon application for and pending initial receipt of public assistance or Supplemental Security Income payments and may receive continued services irrespective of assistance payments if such services are not otherwise available.

(c) The child resides in an area where comparable child welfare assistance and services are not available or are not being provided to all residents on the same basis from a State, county or local public jurisdiction.

§ 20.23 Miscellaneous assistance.

In the absence of other resources, miscellaneous assistance shall be provided to eligible Indians meeting the requirements prescribed in § 20.20(a): *Provided*, That they reside in areas where comparable miscellaneous assistance is not available or is not being provided to all residents on the same basis from a State, county or local public jurisdiction.

§ 20.24 Family and community services.

(a) Family and community services shall be provided for Indians meeting the requirements prescribed in § 20.20(a) who request such services or on whose behalf such services are requested.

(b) Family and community services may include, but are not limited to, the following:

(1) Family and individual counseling to assist in solving problems related to family functioning, housekeeping practices, care and supervision of children, interpersonal relationships, economic opportunity, money management, and problems related to illness, physical or mental handicaps, drug abuse, alcoholism and violation of law.

(2) Protective services which are provided when children or adults are deprived temporarily or permanently of needed supervision by responsible adults, or are neglected, exploited, or need services when they are mentally or physically handicapped or otherwise disabled, and for children who have run away from home. Protective services will be developed in consultation and cooperation with tribal protective services, if applicable. Such services may include but are not limited to the following:

(i) Response to requests from members of the community on behalf of children or adults alleged to need protective services.

(ii) Family and supplemental services, including referral for homemaker and day care services, which appropriately divert children from the juvenile justice system.

(iii) Services to responsible family members or guardians to seek appropriate court protections for the child or adult and, in the absence of such responsible adult, to seek the appointment of a guardian.

(3) Services to Indian courts, which may include but are not limited to the following:

(i) Investigations and reports as to allegations of child and adult abuse and neglect, abandonment, delinquency, running away from home, and conditions such as mentally or physically handicapped or otherwise disabled.

(ii) Provision of social information related to the disposition of a case, including evaluation of alternative resources of treatment.

(iii) Provision of services requested by the court prior to adjudication such as marriage and divorce counseling,

child custody, and after adjudication such as probation, foster care, supervision of children and adults in their own home.

(4) Foster care services for children which shall be provided when an Indian child is a recipient of child welfare assistance under § 20.22 and services are not available from another source, and may be provided as needed for an Indian child living away from its parent(s) in the absence of a child welfare assistance payment. Such services shall include but are not limited to:

(i) Determination that foster care is the best available plan for the child.

(ii) Development of an immediate and long range plan to establish a more stable emotional and social life for the child and its family, including referral of the child for adoption when indicated.

(iii) Services in the recruitment and development of suitable foster homes and other foster care facilities.

(iv) Services to responsible family members, or at the request of an Indian court having jurisdiction, in the selection of a suitable foster care facility and a continued evaluation of the suitability of the facility.

(v) Services in the placement of an Indian child for long or short term foster care suited to his needs and to review the plan periodically.

(vi) Services to parent(s), foster parent(s), or other caretaker(s) to provide care and guidance for the child in foster care.

(5) Foster care services for adults which shall be provided when a general assistance payment under § 20.21 is made for their care in a foster care facilty, or when needed in the absence of a general assistance payment. The services may include but are not limited to:

(i) Arranging for care in a private family home, or a facility for the care of the aged or disabled except where the primary service provided by the facility is medical.

(ii) Services to responsible family members, guardians, or at the request of an Indian court having jurisdiction, in selecting a facility which will provide needed care.

(iii) Services providing for continuity with family and community ties.

(iv) Services to continually evaluate the suitability of the selected care facility, including referral for other care as indicated.

(6) Community services which are services involving other groups, agencies, and facilities in the community may include but are not limited to:

(i) Responses to community needs for evaluating social conditions affecting the well-being of its citizens.

(ii) Treatment of the identified conditions that are within the competence of social services.

(iii) Maintenance of a liaison relationship with other community agencies for the purpose of:

(A) Identifying the availability of services that may be utilized to assist in solving the social problems of individuals, families and children.

(B) Facilitating the use of available community services by Indian persons who need them.

§ 20.25 Consultation with tribes.

Bureau personnel shall upon request provide consultation and advice to tribal governing bodies and other tribal entities including Indian courts seeking to organize their social services to meet more effectively the social service needs of their people. See § 11.21 of this chapter. All programs provided for in this part shall, insofar as possible, be consistent with tribal custom, codes and law.

Subpart D—Hearings and Appeals

§ 20.30 Hearings and appeals.

(a) Any applicant or recipient of financial assistance under this part who is dissatisfied with any decision or action concerning eligibility for or receipt of financial assistance may request a hearing before the Superintendent or his designated representative within 20 days after the date of mailing or delivery of the written notice of the proposed decision as provided in § 20.13. The Superintendent may extend the 20 day period for good cause shown and documented in the record.

(b) Upon request for a hearing by a recipient dissatisfied by a proposed de-

cision the recipient's financial assistance will be continued or reinstated to provide no break in financial assistance until the date of decision by the Superintendent or his designated representative in accordance with § 20.30(f).

(c) The Superintendent or his designated representative shall set a date for the hearing within 10 days of the date of request for a hearing, at a location convenient to both parties, and give written notice to the applicant or recipient.

(d) The written notice of hearing date and location shall include:

(1) A statement of the issues.

(2) The applicant or recipient's right to be heard in person, or to be represented by an authorized representative at no expense to the Bureau.

(3) The applicant or recipient's right to present both oral and written evidence, and written statements prior to or during the hearing.

(4) The applicant or recipient's right to confront and cross-examine witnesses at the hearing.

(5) The applicant or recipient shall have the right of one continuance of not more than 10 days with respect to the date of hearing.

(6) The applicant or recipient's right to examine and copy, at a reasonable time before and during the hearing, his case record as it relates to the proposed action being contested.

(e) The Superintendent or his designated representative shall conduct the hearing in an informal but orderly manner, record the hearing, and provide the applicant or recipient with a transcript of the hearing upon request.

(f) The Superintendent or his designated representative shall render a written decision within 10 days of the completion of the hearing. The written decision shall consist of the following:

(1) A written statement covering the evidence relied upon and reasons for the decision.

(2) The applicant or recipient's right to further appeal from any dissatisfied decision in accordance with procedures for appeals from administrative actions set forth in Part 2 of this chapter.

(g) An interested party wishing to make such an appeal may request Bureau assistance in preparation of the appeal also as prescribed in Part 2 of this chapter.

PART 21—ARRANGEMENT WITH STATES, TERRITORIES, OR OTHER AGENCIES FOR RELIEF OF DISTRESS AND SOCIAL WELFARE OF INDIANS

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AUTHORITY: Sec. 3, 48 Stat. 596, as amended; 25 U.S.C. 454.

SOURCE: 22 FR 10531, Dec. 24, 1957, unless otherwise noted.

§ 21.1 Commissioner to negotiate contracts.

The Commissioner of Indian Affairs may negotiate with State, territory, county or other Federal welfare agencies for such agencies to provide welfare services as contemplated by the Act of June 4, 1936 (49 Stat. 1458; 25 U.S.C. 452), for Indians residing within a particular State within the exterior boundaries of Indian reservations under the jurisdiction of the Bureau of Indian Affairs or on trust or restricted lands under the jurisdiction of the Bureau of Indian Affairs.

[29 FR 5828, May 2, 1964]

§ 21.2 Contracts; by whom executed.

All contracts executed for the purposes of § 21.1 shall be signed on behalf of the United States by the Commissioner of Indian Affairs. The proper officer of the State, territory, county or welfare agency shall execute the contract on its behalf. Evidence of the authority of such officer must accompany the contract. All contracts must be executed in quintuplicate. (They shall become effective only after approval by the Secretary of the Interior.)

§ 21.3 State or other contracting agency furnish plan of operation.

A plan executed by the proper State or other agency entering into the contract shall accompany each instrument. This plan shall describe the services and assistance to be rendered under the terms of the contract. It shall include a budget showing the plan of expenditure of the funds to be turned over to the State or other agency. Upon the approval of the contract, no deviation from the plan shall be made unless approved in advance by the Commissioner of Indian Affairs.

§ 21.4 Standards of service.

Standards of aid, care, and service rendered to the Indians under the contracts shall not be less than those standards maintained by the State for other clients requiring similar aid, care and services.

§ 21.5 Personnel.

The personnel employed for public welfare services to Indians under the contract shall be subject to the State merit system and to the approval of the Commissioner of Indian Affairs and the welfare authorities of the State, unless otherwise provided in the contract.

§ 21.6 Financial statement.

Thirty days after the close of each fiscal year, the State or other agency to which funds have been furnished pursuant to the contract shall submit to the Commissioner of Indian Affairs a detailed financial statement showing all expenditures made pursuant to the contract. An explanation shall be contained of any deviation from the plan originally submitted by the agency. The records of the contractor shall be available for inspection by representatives of the Bureau of Indian Affairs.

§ 21.7 Cooperative services.

The Bureau will maintain cooperative services through its superintendents and other personnel to further the purposes of the contract. When mutually agreed to in the contract, the Bureau may maintain on its payroll one or more representatives whose duties shall be described in the contract and the salary and expenses of any such person or persons shall constitute part of the funds to be furnished to the State or other contracting agency.

§ 21.8 Use of Government property and facilities.

The contract shall specify the terms upon which property, other facilities and equipment of the Government may be used by the State or other agency. All contracts which provide for the use of Government automobiles shall require that the particular State or other agency shall be responsible for the return of the equipment in as good condition as when received, excepting usual wear and tear and depreciation and such agency shall be responsible for all damage or injury done to property or persons and shall carry sufficient insurance to cover same and expressly relieve the Government of any and all liability for any such personal injury or property damages committed while such automobile is in the possession of the contracting agency.

PART 22—CARE OF INDIAN CHILDREN IN CONTRACT SCHOOLS

Sec.

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AUTHORITY: 5 U.S.C. 301.

SOURCE: 22 FR 10532, Dec. 24, 1957, unless otherwise noted.

§ 22.1 Institution defined.

For convenient designation missions, associations, and other eleemosynary institutions contracting for the care of Indian children in accordance with the terms of this part will be referred to in this part simply as "the institution."

§ 22.2 Application of institution.

All such institutions desiring to receive payment for care of Indian children under the provisions of this part shall make application in writing through their responsible heads to the Commissioner of Indian Affairs, specifying therein the number of children for whom payment is desired and the rate per pupil to be charged therefor. All such applications must be submitted to the Commissioner of Indian Affairs on or before May 1 of each year, for children to be received during the school year beginning the following September. Consideration of any later applications will depend only upon availability of funds and a sufficient number of Indian children not having been otherwise provided for.

§ 22.3 Contracts dependent on need and desire of Indians.

Contracts will be considered only in behalf of children from localities where there are a sufficient number of Indian children requiring this kind of service who reside within the exterior boundaries of Indian reservations under the jurisdiction of the Bureau of Indian Affairs or on trust or restricted lands under the jurisdiction of the Bureau of Indian Affairs, and the Commissioner of Indian Affairs reserves the right to investigate the need and take into consideration the desires of the Indian parents of such children as formally expressed by them.

[29 FR 5828, May 2, 1964]

§ 22.4 Services to be rendered.

The institution shall provide, in a manner satisfactory to the Commissioner of Indian Affairs, lodging, subsistence, care, medicine and all necessary facilities and appliances for healthful accommodation of the number of Indian children covered by any contract entered into pursuant to this part.

§ 22.5 Supervisory services.

The Commissioner of Indian Affairs is authorized to extend to all departments of the institution those supervisory services which are given to regular Indian Service institutions.

§ 22.6 Children entitled to benefits.

No child having less than one-fourth Indian blood, and no child who is under 6 or over 21 years of age shall be included under any contract without special permission from the Commissioner of Indian Affairs.

§ 22.7 Health of applicant.

Before acceptance in the institution, applicants shall be certified by the Indian agency physician or other authorized physician to be in good health and sound physical condition.

CROSS REFERENCE: For health regulations pertaining to Indians, see 42 CFR Part 36.

§ 22.8 Pupils must be blood members of tribe.

Indian pupils for whose care payment is to be made from tribal funds shall be children of duly enrolled members of the tribe who are members of such tribe by blood and not by adoption.

§ 22.9 Reports.

Reports concerning attendance in the institution shall be made as required on blank forms to be furnished by the Commissioner of Indian Affairs.

§ 22.10 Eligibility of pupils.

The institution must agree to eliminate from its rolls as residents those children of Indian blood who live within a reasonable distance from any public or day school, except those children who are found to need special institutional care, and to limit its enrollment to such individual Indian children as are approved for enrollment by the agency superintendent or the superintendent of Indian education designated to approve enrollment or to handle payments under any contract entered into pursuant to this part.

Indian children eliminated from Government boarding schools because of satisfactory home and school facilities nearby shall not be permitted to enroll in any school maintained by the institution or its responsible head, except at the personal expense of their parents or guardian, or at the expense of the institution.

§ 22.11 Payments.

Payment will be made to the institution at the yearly rate agreed upon for each and every child in residence authorized to be enrolled under the provisions and restrictions of this part. Payments may be made at the end of each fiscal quarter, or monthly, as provided for by the terms of the individual contract, and shall be computed on the average attendance of children for such period. Payments to the institution for the fiscal year, or any fractional part thereof, shall not exceed a sum aggregating more than the total amount specified under the contract. Where quarterly payments are provided for, such payments shall be made at a rate equal to one-third of the annual per capita rate, and shall be paid at the end of each quarter. If monthly payments are provided for, such payments shall be made at the rate of one-ninth of the annual per capita rate. Children enrolled prior to the Christmas holidays, whether actually present or not during such holidays, shall be regarded as in attendance for the purpose of payment under such contracts.

§ 22.12 Use of tribal funds.

Where payments are to be made in whole or in part from tribal funds, the contract will be approved subject to the condition that payment from such funds will be made only if and when such funds are available.

§ 22.13 Vouchers.

Payments will be made at the end of each month or quarter, as specified in § 22.11, in accordance with the provisions of the contract, on vouchers in duplicate, the original of which must be certified to by the responsible head of the institution, evidencing that such institution has been maintained and managed in accordance with this part and the true intent and meaning of the contract.

§ 22.14 Abrogation.

The Commissioner of Indian Affairs shall have the right to abrogate any contract made in accordance with this part in the manner following:

(a) After 15 days' notice, in writing, to the institution, where the institution has failed to comply with the agreements and stipulations of its contract and the requirements of this part; such 15 days' notice to be computed from and to include the day on which such notice is either served personally by a duly authorized employee of the United States on the institution or is left by such officer at the principal school building of such institution.

(b) After 60 days' notice, in writing, to the institution, for any reason deemed satisfactory to the Commissioner of Indian Affairs; such 60 days' notice to be computed from and to include the day on which such notice is either served personally on the institution or is left at the principal school building of such institution.

§ 22.15 Inspection.

Such institution shall be subject to inspection at any time by the Commissioner of Indian Affairs or his duly authorized representative, and the institution shall agree in any contract entered into pursuant hereto that it will dismiss from its service any employee or employees who may be found by the Commissioner of Indian Affairs not to be qualified for the respective positions which they occupy in the institution.

§ 22.16 Modification.

By mutual consent of the parties thereto any contract made under this part may be changed, altered, modified, amended, or abrogated in whole or in part.

§ 22.17 Transfer of contract.

The institution shall agree not to transfer any contract made pursuant to this part, or any interest therein; any violation of this provision will automatically terminate all obligations on the part of the Government thereunder.

§ 22.18 No Member of Congress, etc., to be a party.

No Member of or Delegate to Congress, Resident Commissioner, officer, agent or other employee of the Government shall be admitted to any share or part in any contract made under this part or derive any pecuniary benefit therefrom, but this restriction shall not be construed to extend to any such contract made with a corporation or company for its general benefit.

§ 22.19 Approval.

All contracts made pursuant to this part amounting to $2,000 or over shall be subject to approval by the Secretary of the Interior.

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AUTHORITY: 5 U.S.C. 301; secs. 463 and 465 of the revised statutes (25 U.S.C. 2 and 9).

SOURCE: 44 FR 45102, July 31, 1979, unless otherwise noted.

Subpart A—Purpose, Definitions, and Policy

§ 23.1 Purpose.

The purpose of the regulations in this Part is to govern the provision of administration and funding of the Indian Child Welfare Act of 1978 (Pub. L. 95-608, 92 Stat. 3069, 25 U.S.C. 1901-1952).

§ 23.2 Definitions.

(a) "Act" means the Indian Child Welfare Act, Pub. L. 95-608 (92 Stat. 3073), 25 U.S.C. 1901 *et seq.*

(b) "Child custody proceeding," which shall mean and include:

(1) "Foster care placement"—any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(2) "Termination of parental rights"—an action resulting in the termination of the parent-child relationship;

(3) "Preadoptive placement"—the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(4) "Adoptive placement"—the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

(5) Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime in the jurisdiction where the act occurred or upon an award, in a divorce proceeding, of custody to one of the parents. It does include status offenses, such as truancy, incorrigibility etc.

(c) "Extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

(d) "Indian" means: (1) *Jurisdictional Purposes:* For purposes of matters related to child custody proceedings any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 7 or the Alaska Native Claims Settlement Act (85 Stat. 688, 689).

(2) *Service eligibility for on or "near" reservation Children and Family Service Programs.* For purposes of Indian child and family service programs under section 201 of the Indian Child Welfare Act (92 Stat. 3075), any person who is a member, or a one-fourth degree or more blood quantum descendant of a member of any Indian tribe.

(3) *Service eligibility for off-reservation Children and Family Service Programs:* For the purpose of Indian child and family programs under section 202 of the Indian Child Welfare Act (92 Stat. 3073) any person who is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the state in which they reside, or who is a descendent, in the first or second degree, of any such member, or is an Eskimo or Aleut or other Alaska Native, or is considered by the Secretary of the Interior to be an Indian for any purpose, or is determined to be an Indian under regulations promulgated by the Secretary of Health, Education, and Welfare. Membership status is to be determined by the tribal law, ordinance, or custom.

(e) "Indian child" means any unmarried person who is under age eighteen and is either (1) a member of an Indian tribe, or (2) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(f) "Indian child's tribe" means (1) the Indian tribe in which an Indian child is a member or is eligible for membership or (2) in the case of an Indian child who is a member of or is eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts. (Refer to Guidelines for State Courts-Indian Child Custody Proceedings.)

(g) "Indian custodian" means any Indian person(s) who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

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(h) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians.

(i) "Indian tribe" means any Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 689), as amended.

(j) "Parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established.

(k) "Reservation" means Indian country as defined in section 1151 of Title 18, United States Code, and any lands not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual subject to a restriction by the United States against alienation.

(l) "State Court" means any agent or agency of a State including the District of Columbia or any territory or possession of the United States or any political subdivisions empowered by law to terminate parental rights or to make foster care placements, preadoptive placements, or adoptive placements.

(m) "Tribal court" means a court with jurisdiction over child custody proceedings and which is either a court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(n) For other applicable definitions refer to 25 CFR 20.1 and 271.2.

§ 23.3 Policy.

The policy of the Act and of these regulations is to protect Indian children from arbitrary removal from their families and tribal affiliations by establishing procedures to insure that measures to prevent the breakup of Indian families are followed in child custody proceedings. This will insure protection of the best interests of Indian children and Indian families by providing assistance and funding to Indian tribes and Indian organizations in the operation of child and family service programs which reflect the unique values of Indian culture and promote the stability and security of Indian families. In administering the grant authority for Indian Child and Family Programs it shall be Bureau policy to emphasize the design and funding of programs to promote the stability of Indian families.

Subpart B—Notice of Involuntary Child Custody Proceedings and Payment for Appointed Counsel

§ 23.11 Notice.

(a) If the identity or location of the parents, Indian custodians or the Indian child's tribe cannot be determined, notice of the pendency of any involuntary child custody proceeding involving an Indian child in a state court shall be sent by registered mail with return receipt requested to the appropriate address listed in paragraph (b) of this section.

(b)(1) For proceedings in Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia or any territory or possession of the United States, notice should be sent to the following address: Eastern Area Director, Bureau of Indian Affairs, 1951 Constitution Avenue NW., Washington, D.C. 20245.

(2) For proceedings in Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio or Wisconsin, notice should be sent to the following address: Minneapolis Area Director, Bureau of Indian Affairs, 831-2nd Avenue, S., Minneapolis, Minnesota 55402.

(3) For proceedings in Nebraska, North Dakota, or South Dakota, notice should be sent to the following address: Aberdeen Area Director, Bureau of Indian Affairs, 115-4th

Avenue, SE., Aberdeen, South Dakota 57401.

(4) For proceedings in Kansas, Texas, and the western Oklahoma counties of Alfalfa, Beaver, Beckman, Blain, Bryan, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Pawnee, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods, and Woodward, notice should be sent to the following address: Anadarko Area Director, Bureau of Indian Affairs, P.O. Box 368, Anadarko, Oklahoma 73005.

(5) For proceedings in Montana or Wyoming notice should be sent to the following address: Billings Area Director, Bureau of Indian Affairs, 316 N. 26th Street, Billings, Montana 59101.

(6) For proceedings in Colorado or New Mexico, (exclusive of those New Mexico counties listed in paragraph (b)(9) below), notice should be sent to the following address: Albuquerque Area Director, Bureau of Indian Affairs, 5301 Central Avenue, NE., P.O. Box 8327, Albuquerque, New Mexico 87108.

(7) For proceedings in Alaska notice should be sent to the following address: Juneau Area Director, Bureau of Indian Affairs, P.O. Box 3-8000, Juneau, Alaska 99801.

(8) For proceedings in Arkansas, Missouri, and all Oklahoma counties not listed under paragraph (b)(4) above, notice should be sent to the following address: Muskogee Area Director, Bureau of Indian Affairs, Federal Building, Muskogee, Oklahoma 74401.

(9) For proceedings in the Arizona counties of Apache, Coconino, and Navajo; the New Mexico counties of McKinley, San Juan, and Socorro; and the Utah county of San Juan, notice should be sent to the following address: Navajo Area Director, Bureau of Indian Affairs, Window Rock, Arizona 86515.

(10) For proceedings in Arizona (exclusive of those counties listed in paragraph (b)(9) above), Nevada, or Utah (exclusive of that county listed in paragraph (b)(9) above), notice should be sent to the following address: Phoenix Area Director, Bureau of Indian Affairs, P.O. Box 7007, Phoenix, Arizona 85011.

(11) For proceedings in Idaho, Oregon or Washington, notice should be sent to the following address: Portland Area Director, Bureau of Indian Affairs, 1425 N.E. Irving Street, Portland, Oregon 97208.

(12) For proceedings in California or Hawaii, notice should be sent to the following address: Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 85011.

(c) Notice shall include the following information if known:

(1) Name of the Indian child, birthdate, birthplace,

(2) Indian child's tribal affiliation,

(3) Names of Indian child's parents or Indian custodians, including birthdate, birthplace, and mother's maiden name, and

(4) A copy of the petition, complaint or other document by which the proceeding was initiated.

(d) Upon receipt of the notice, the Bureau shall make a diligent effort to locate and notify the Indian child's tribe and the Indian child's parents or Indian custodians. Such notice may be by registered mail with return receipt requested or by personal service and shall include the information provided under subsection (c) of this section in addition to the following:

(1) A statement of the right of the biological parents, Indian custodians and the Indian tribe to intervene in the proceedings.

(2) A statement that if the parent(s) or Indian custodian(s) is unable to afford counsel, counsel will be appointed to represent them.

(3) A statement of the right of the parents, the Indian custodians and the child's tribe to have, upon request, up to twenty additional days to prepare for the proceedings.

(4) The location, mailing address and telephone number of the court.

(5) A statement of the right of the parents, Indian custodians and the Indian child's tribe to petition the court for transfer of the proceeding to the child's tribal court, and their right to refuse to permit the case to be transferred.

(6) A statement of the potential legal consequences of the proceedings on the future custodial and parental rights of the parents or Indian custodians.

(7) A statement that, since child custody proceedings are usually conducted on a confidential basis, tribal officials should keep confidential the information contained in the notice concerning the particular proceeding and not reveal it to anyone who does not need the information in order to exercise the tribe's rights under the Act.

(e) The Bureau shall have ten days, after receipt of the notice from the persons initiating the proceedings, to notify the child's tribe and parents or Indian custodians and send a copy of the notice to the court. If within the ten-day time period the Bureau is unable to verify that the child is in fact an Indian, or meets the criteria of an Indian child as defined in section (4) of the Act, or is unable to locate the parents or Indian custodians, the Bureau shall so inform the court prior to initiation of the proceedings and state how much more time, if any, it will need to complete the search. The Bureau shall complete its search efforts even if those efforts cannot be completed before the child custody proceeding begins.

(f) Upon request from a potential participant in an anticipated Indian child custody proceeding, the Bureau shall attempt to identify and locate the Indian child's tribe, parents or Indian custodians for the person making the request.

§ 23.12 Designated tribal agent for service of notice.

Any Indian tribe entitled to notice may designate by resolution, or by such other form as the tribal constitution or current practice requires, an agent for service of such notice other than the tribal chairman and send a copy of the designation to the Secretary. The Secretary shall publish the name and address of the designated agent in the FEDERAL REGISTER on an annual basis. A current listing of such agents will be maintained by the Secretary and will be available through the Area Offices.

§ 23.13 Payment for appointed counsel in state Indian child custody proceedings.

(a) When a state court appoints counsel for an indigent party in an Indian child custody proceeding, for which the appointment of counsel is not authorized under state law, the court shall send written notice of the appointment to the Bureau of Indian Affairs Area office designated for that state in § 23.11 of this part. The notice shall include the following:

(1) Name, address and telephone number of attorney who has been appointed.

(2) Name and address of client for whom counsel is appointed.

(3) Relationship of client to child.

(4) Name of Indian child's tribe.

(5) Copy of the petition or complaint.

(6) Certification by the court that state law makes no provision for appointment of counsel in such proceedings.

(7) Certification by the court that the client is indigent

(b) The Area Director shall certify that the client is eligible to have his or her appointed counsel compensated by the Bureau of Indian Affairs unless:

(1) The litigation does not involve a child custody proceeding as defined in 25 U.S.C.1903(1);

(2) The child who is the subject of the litigation is not an Indian child as defined in 25 U.S.C. 1903(4);

(3) The client is neither the Indian child who is the subject of the litigation, the Indian child's parent as defined in 25 U.S.C. 1903(9), or the child's Indian custodian as defined in 25 U.S.C.1903(6);

(4) State law provides for appointment of counsel in such procedings;

(5) The notice of the Area Director of appointment of counsel is incomplete; or

(6) No funds are available for such payments.

(c) No later than 10 days after receipt of the notice of appointment of counsel, the Area Director shall notify the court, the client and the attorney in writing whether the client has been certified as eligible to have his or her attorney fees and expenses paid by the Bureau of Indian Affairs. In the event that certification is denied, the notice

shall include written reasons for that decision together with a statement that the Area Director's decision may be appealed to the Commissioner of Indian Affairs under the provisions of the 25 CFR Part 2.

(d) When determining attorney fees and expenses the court shall:

(1) Determine the amount of payments due appointed counsel by the same procedures and criteria it uses in determining the fees and expenses to be paid appointed counsel in juvenile delinquency procedings.

(2) Submit approved vouchers to the Area Director who certified eligibility for Bureau payment together with the court's certification that the amount requested is reasonable under the state standards and considering the work actually performed in light of the criteria that apply in determining fees and expenses for appointed counsel in juvenile delinquency proceedings.

(e) The Area Director shall authorize the payment of attorney fees and expenses in the amount requested in the voucher approved by the court unless:

(1) The court has abused its discretion under state law in determining the amount of the fees and expenses; or

(2) The client has not been previously certified as eligible under paragraph (c) of this section.

(f) No later than 15 days after receipt of a payment voucher the Area Director shall send written notice to the court, the client and the attorney stating the amount of payment, if any, that has been authorized. If the payment has been denied or the amount authorized is less than the amount requested in the voucher approved by the court, the notice shall include a written statement of the reasons for the decision together with a statement that the decision of the Area Director may be appealed to the Commissioner under the procedures of 25 CFR Part 2.

(g) Failure of the Area Director to meet the deadlines specified in paragraphs (c) and (f) of this section may be treated as a denial for purposes of appeal under paragraphs (f) of this section.

Subpart C—Grants to Indian Tribes and Indian Organizations for Indian Child and Family Programs

§ 23.21 Eligibility requirements.

The governing body of any tribe or tribes, or any Indian organization, including multi-service Indian centers, may apply individually or as a consortium for a grant under this part.

§ 23.22 Purpose of grants.

Grants are for the purpose of:

(a) Establishment and operation of Indian child and family service programs. Examples of such programs may include but are not limited to:

(1) Operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children.

(2) Family assistance (including homemaker and home counselors), day care, afterschool care recreational activities, respite care, and employment.

(3) Employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters.

(4) Education and training of Indians (including tribal court judges and staff) in skills relating to child and family assistance and service programs.

(5) Subsidy programs under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate state standards of support for maintenance and medical needs.

(6) Guidance, legal representation, and advice to Indian families involved in tribal, state, or Federal child custody proceedings.

(7) Home improvements programs.

(8) Preparation and implementation of child welfare codes. An example in this regard is establishment of a system for licensing or otherwise regulating Indian foster and adoptive homes.

(b) Providing matching shares for other Federal or non-Federal grant programs as prescribed in § 23.43.

§ 23.23 Obtaining application instructions and materials.

Application instructions and related application materials may be obtained from Superintendents, Area Directors or the Commissioner.

§ 23.24 Content of application.

Application for a grant under this part shall include:

(a) Name and address of Indian tribal governing body(s) or Indian organization applying for a grant,

(b) Descriptive name of project,

(c) Federal funding needed,

(d) Population directly benefiting from the project,

(e) Length of project,

(f) Beginning date,

(g) Project budget categories or items,

(h) Program narrative statement,

(i) Certification or evidence of request by Indian tribe or board of Indian organization,

(j) Name and address of Bureau office to which application is submitted,

(k) Date application is submitted to Bureau, and

(l) Additional information pertaining to grant applications for funds to be used as matching shares will be requested as prescribed in § 23.43.

§ 23.25 Application selection criteria.

(a) The Commissioner or designated representative shall select for grants under this part those proposals which will in his or her judgment best promote the purposes of title II of the Act taking into consideration insofar as practicable the following factors:

(1) The number of actual or estimated Indian child placements outside the home, the number of actual or estimated Indian family breakups, and the need for directly-related preventive programs, all as determined by analysis of relevant statistical and other data available from tribal and public court records and from the records of tribal, Bureau, public and private social services agencies serving Indian children and their families.

(2) The relative accessibility which the Indian population to be served under a specific proposal already has to existing child and family service programs emphasizing prevention of Indian family breakup. Factors to be considered in determining relative accessibility include:

(i) Cultural barriers;

(ii) Discrimination against Indians;

(iii) Inability of potential Indian clientele to pay for services;

(iv) Lack of programs which provide free service to indigent families;

(v) Technical barriers created by existing public or private programs;

(vi) Availability of transportation to existing programs;

(vii) Distance between the Indian community to be served under the proposal and the nearest existing program;

(viii) Quality of service provided to Indian clientele; and

(ix) Relevance of service provided to specific needs of Indian clientele.

(3) The extent to which the proposed program would duplicate any existing child and family service program emphasizing prevention of Indian family breakup, taking into consideration all factors listed in paragraphs (a) (1) and (2) above.

(b) Selection for grants under this part for on or "near" reservation programs shall be limited to the governing body of the tribe to be served by the grant. However, the governing body of the tribe may make a subgrant or subcontract with another organizational entity including but not limited to an Indian organization, subject to the provisions of § 23.36.

(c) Preference for selection for grants under this part for off-reservation programs shall be given to those off-reservation Indian organizations which show evidence of substantial support from the Indian community or communities to be served by the grant. However, the Indian organization may make a subgrant or subcontract subject to the provisions of § 23.36. Factors to be considered in determining substantial support include:

(1) Letters of support from individuals and families to be served;

(2) Local Indian community representation in and control over the Indian entity requesting the grant.

(3) The requirements of this subsection do not apply in the case of an existing multi-service Indian center or an

off-reservation Indian organization of demonstrated ability which has operated and continues to operate an Indian child welfare or family assistance program.

§ 23.26 Request from tribal governing body or Indian organization.

(a) The Bureau shall only make a grant under this part for an on or "near" reservation program when officially requested to do so by a tribal governing body. This request may be in the form of a tribal resolution, an endorsement included in the grant application or such other forms as the tribal constitution or current practice requires.

(b) The Bureau shall only make a grant under this part for an off-reservation program when officially requested to do so by the governing body of an Indian organization. This request may be in one of the forms prescribed in (a) above and shall be further subject to the provisions of § 23.25(c) (1), (2), and (3) above.

§ 23.27 Grant approval limitation.

(a) *Area Office approval.* Authority for approval of a grant application under this part shall be with the Area Director when the intent, purpose and scope of the grant proposal pertains solely to an Indian tribe or tribes, or to an Indian organization representing an off-reservation community, located within that Area Director's administrative jurisdiction.

(b) *Central Office approval.* Authority for approval of a grant application under this part shall be with the Commissioner when the intent, purpose and scope of the grant proposal pertains to Indian tribes, off-reservation communities or Indian organizations representing different Area Office administrative jurisdictions but located within the Commissioner's overall jurisdiction.

(c) Grant approvals under this section shall be subject to availability of funds. These funds will include those which are:

(1) Directly appropriated for implementation of this Act. Distribution to approved applicants of these appropriated and available funds will be based upon a formula designed to ensure insofar as possible that all approved applicants receive a proportionately equitable share sufficient to fund an effective program. This formula will be published as a FEDERAL REGISTER Notice.

(2) Appropriated under other Acts for Bureau programs which are related to the purposes prescribed in § 23.22.

§ 23.28 Submitting application.

(a) *Agency Office.* An application for a grant under this part for an on or "near" reservation program shall be initially submitted to the appropriate Superintendent for review and recommendation as prescribed in § 23.29.

(b) *Area Office.* An application for a grant under this part for an off-reservation program shall be initially submitted to the appropriate Area Director for review and action as prescribed in § 23.31.

§ 23.29 Agency Office review and recommendation.

(a) Recommendation for approval or disapproval of a grant under this part shall be made by the Superintendent when the intent, purpose and scope of the grant proposal pertains to or involves an Indian tribe or tribes located within that Superintendent's administrative jurisdiction.

(b) Upon receipt of an application for a grant under this part, the Superintendent shall:

(1) Acknowledge receipt of the application in writing within 10 days of its arrival at the Agency Office.

(2) Review the application for completeness of information and promptly request any additional information which may be required to make a recommendation.

(3) Assess the completed application for appropriateness of purpose as prescribed in § 23.22, and for overall feasibility.

(4) Inform the applicant, in writing and before any final recommendation, of any special problems or impediments which may result in a recommendation for disapproval; offer any available technical assistance required to overcome such problems or impediments; and solicit the applicant's written response.

(5) Recommend approval or disapproval following full assessment of the completed application and forward the application and recommendation to the Area Director for further action.

(6) Promptly notify the applicant in writing as to the final recommendation. If the final recommendation is for disapproval, the Superintendent will include in the written notice to the applicant the specific reasons therefor.

(7) In instances where a joint application is made by tribes representing more than one Agency Office administrative jurisdiction, copies of the application shall be provided by the applicants to each involved Superintendent for review and recommendation as prescribed in this section.

§ 23.30 Deadline for agency office action.

Within 30 days of an application for a grant under this part, the Superintendent shall take action as prescribed in § 23.29. Extension of this deadline will require consultation with, and written consent of, the applicant.

§ 23.31 Area office review and action.

(a) Upon receipt of an application for a grant requiring Area Office approval, the Area Director shall:

(1) Review the application following applicable review procedures prescribed in § 23.29.

(2) Review the Superintendent's recommendation as it pertains to the application.

(3) Approve or disapprove the application.

(b) In instances where a joint application is made by tribes representing more than one Area Office administrative jurisdiction, the Area Director shall add his or her recommendation for approval or disapproval to that of the Superintendent and shall forward the application and recommendations to the Commissioner for further action.

(c) Upon taking action as prescribed in paragraphs (a) and (b) of this section, the Area Director shall promptly notify the applicant in writing as to the action taken. If the action taken is disapproval or recommendation for disapproval of the application, the Area Director will include in the written notice the specific reasons therefor.

§ 23.32 Deadline for Area Office action.

Within 30 days of receipt of an application for a grant under this part, the Area Director shall take action as prescribed in § 23.31. Extension of this deadline will require consultation with, and written consent of, the applicant.

§ 23.33 Central Office review and decision.

Upon receipt of an application for a grant requiring Central Office approval, the Commissioner shall:

(a) Review the application following the applicable review procedures prescribed in § 23.29.

(b) Review Agency and Area Office recommendations as they pertain to the application.

(c) Approve or disapprove the application.

(d) Promptly notify the applicant in writing as to the approval or disapproval of the application. If the application is disapproved, the Commissioner will include in the written notice the specific reasons therefor.

§ 23.34 Deadline for Central Office action.

Within 30 days of receipt of an application for a grant under this part the Commissioner shall take action as prescribed in § 23.23. Extension of this deadline will require consultation with a written consent of the applicant.

§ 23.35 Grant execution and administration.

(a) Grant approved pursuant to § 23.27(a) shall be executed and administered at the Area Office level.

(b) Grants approved pursuant to § 23.27(b) shall be executed and administered at the Central Office level provided that the Commissioner may designate an Area Office to execute or administer such a grant.

§ 23.36 Subgrants and subcontracts.

The grantee may make subgrants or subcontracts under this part provided that such subgrants or subcontracts are for the purpose for which the grant was made and that the grantee retains administrative and financial

responsibility over the activity and the funds.

Subpart D—General Grant Requirements

§ 23.41 Applicability.

The general requirements for grant administration in this part are applicable to all Bureau grants provided to tribal governing bodies and to Indian organizations under this part, except to the extent inconsistent with an applicable Federal statute or regulation.

§ 23.42 Reports and availability of information to Indians.

Any tribal governing body or Indian organization receiving a grant under this part shall make information and reports concerning that grant available to the Indian people which it serves or represents. Access to these data shall be requested in writing and shall be made available within 10 days of receipt of that request, subject to any exceptions provided for in the Freedom of Information Act (5 U.S.C. 552), as amended by the Act of November 21, 1974 (Pub. L. 93-502; 88 Stat. 1561).

§ 23.43 Matching share.

(a) Specific Federal laws notwithstanding, grant funds provided under this part for on or "near" reservation programs may be used as non-Federal matching share in connection with funds provided under Titles IVB and XX of the Social Security Act or under any other Federal or non-Federal programs which contribute to the purposes specified in § 23.22.

(b) In the establishing, operating and funding of Indian child and family service programs both on, "near" or off-reservation, the Secretary of the Interior may enter into agreements with the Secretary of Health, Education, and Welfare for the use of funds appropriated for similar programs of the Department of Health, Education, and Welfare.

(c) Superindents, Area Directors, and their designated representatives will, upon tribal or Indian organization request, assist in obtaining information concerning other Federal agencies with matching fund programs and will, upon request, provide technical assistance in developing applications for submission to those Federal agencies.

§ 23.44 Performing personal services.

Any grant provided under this part may include provisions for the performance of personal services which would otherwise be performed by Federal employees.

§ 23.45 Penalties.

If any officer, director, agent, employee of, or anyone connected with any recipient of a grant, subgrant, contract or subcontract under this part, does embezzle, willfully misapply, steal, or obtain by fraud any of the money, funds, assets, or property which are the subject of such a grant, subgrant, contract or subcontract, he or she may be subject to penalties as provided in 18 U.S.C. 1001.

§ 23.46 Fair and uniform services.

Any grant provided under this part shall include provisions to assure the fair and uniform provision by the grantee of services and assistance to all Indians included within or affected by the intent, purpose and scope of that grant.

Subpart E—Grant Revision, Cancellation or Assumption

§ 23.51 Revisions or amendments of grants.

(a) Request for budget revisions or amendments to grants awarded under this part shall be made as provided in § 276.14 of this Chapter.

(b) Requests for revisions or amendments to grants provided under this part, other than budget revisions referred to in paragraph (a) of this section, shall be made to the Bureau officer responsible for approving the grant in its original form. Upon receipt of a request for revisions or amendments to grants, the responsible Bureau officer shall follow precisely the same review procedures and time specified in § 23.29.

§ 23.52 Assumption.

(a) When the Bureau cancels a grant for cause as specified in § 276.15 of this Chapter, the Bureau may assume control or operation of the grant program, activity or service. However, the Bureau shall not assume a grant program, activity or service that it did not administer before tribal grantee control unless the tribal grantee and the Bureau agree to the assumption.

(b) When the Bureau assumes control or operation of a grant program cancelled for cause, the Bureau may decline to enter into a new grant agreement until satisfied that the cause for cancellation has been corrected.

Subpart F—Hearings and Appeals

§ 23.61 Hearings.

Hearings referred to in § 276.15 of this Chapter shall be conducted as follows:

(a) The grantee and the Indian tribe(s) affected shall be notified in writing, at least 10 days before the hearing. The notice should give the date, time, places, and purpose of the hearing.

(b) A written record of the hearing shall be made. The record shall include written statements submitted at the hearing or within 5 days following the hearing.

(c) The hearing will be conducted on as informal a basis as possible.

§ 23.62 Appeals from decision or action by Superintendent.

(a) A grantee may appeal any decision made or action taken by a Superintendent under this part. Such appeal shall be made to the Area Director as provided in Part 2 of this Chapter.

(b) The appellant shall provide its own attorney or other advocates to represent it during the appeal process.

§ 23.63 Appeals from decision or action by Area Director.

(a) A grantee may appeal any decision made or action taken by an Area Director under this part. Such appeal shall be made to the Commissioner as provided in Part 2 of this Chapter.

(b) The appellant shall provide its own attorney or other advocates to represent it during the appeal process.

§ 23.64 Appeals from decision or action by Commissioner.

(a) A grantee may appeal any decision made or action taken by the Commissioner under this part only as provided in Part 2 of this Chapter.

(b) The appellant shall provide its own attorney or other advocates to represent it during the appeal process.

§ 23.65 Failure of Agency or Area Office to act.

Whenever a Superintendent or Area Director fails to take action on a grant application within the time limits established in this part, the applicant may at its option, request action by the next higher Bureau official who has approval authority as prescribed in this part. In such instances, the Superintendent or Area Director who failed to act shall immediately forward the application and all related materials to that next higher Bureau official.

Subpart G—Administrative Requirements

§ 23.71 Uniform administrative requirements for grants.

Administrative requirements for all grants provided under this part shall be those prescribed in Part 276 of this Chapter.

Subpart H—Administrative Provisions

§ 23.81 Recordkeeping and information availability.

(a) Any state court entering a final decree or adoptive order for any Indian child shall provide the Secretary of the Interior within 30 days a copy of said decree or order, together with any information necessary to show:

(1) Name of the child, the tribal affiliation of the child, and the Indian blood quantum of the child;

(2) Names and addresses of the biological parents and the adoptive parents;

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(3) Identity of any agency having relevant information relating to said adoption placement.

To assure and maintain confidentiality where the biological parent(s) have by affidavit requested their identity remain confidential, a copy of such affidavit shall be provided the Secretary.

Such information, pursuant to Section 301(a) of the Act, shall not be subject to the Freedom of Information Act (5 U.S.C. 552) as amended. The Secretary shall insure that the confidentiality of such information is maintained.

The proper address for transmittal of information required by Section 301(a) of the Act is: Chief, Division of Social Services, Bureau of Indian Affairs, 1951 Constitution Avenue, N.W., Washington, D.C. 20245. The envelope containing all such information should be marked "Confidential." This address shall be sent to the highest court of Appeal, the Attorney General and Governor of each state. In some states, a state agency has been designated to be repository for all state court adoption information. Where such a system is operative, there is no objection to that agency assuming reporting responsibilities for the purpose of this Act.

(b) The Division of Social Services, Bureau of Indian Affairs is authorized to receive all information and to maintain a central file on all state Indian adoptions. This file shall be confidential and only designated persons shall have access to it. Upon the request of the adopted Indian individual over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Division of Social Services shall disclose such information as may be necessary for enrollment or determining any rights or benefits associated with membership, except the name of the biological parents where an affidavit of confidentiality has been filed, to those persons eligible to request such information under the Act. The Chief Tribal Enrollment officer of the Bureau of Indian Affairs is authorized to disclose enrollment information relating to an adopted Indian child where the biological parents have by affidavit requested anonymity. In such cases, the Chief Tribal Enrollment Officer shall certify to the child's tribe, where the information warrants, that the child's parentage and other circumstances entitle the child to enrollment consideration under the criteria established by said tribe.

Subpart I—Assistance to State Courts

§ 23.91 Assistance in identifying witnesses.

Upon the request of a party in an involuntary child custody proceeding or of a court the Secretary shall assist in identifying qualified expert witnesses. Such requests for assistance should be sent to the Area Director in the Area where the court proceedings are initiated. Refer to § 23.11(b).

§ 23.92 Assistance in identifying interpreters.

Upon the request of a party in any Indian child custody proceeding or of a court the Secretary shall assist in identifying interpreters. Such requests for assistance should be sent to the Area Director in the Area where the court proceedings are initiated. Refer to § 23.11(b).

§ 23.93 Assistance in locating biological parents of Indian child after termination of adoption.

Upon the request of a child placement agency, the court or an Indian tribe, the Secretary shall assist in locating the biological parents or prior Indian custodian of an Indian adopted child whose adoption has been terminated. Such requests for assistance should be sent to the Area Director in the Area where the court proceedings occur. Refer to § 23.11(b).

SUBCHAPTER E—EDUCATION

PART 31—FEDERAL SCHOOLS FOR INDIANS

Sec.
31.0 Definitions.
31.1 Enrollment in Federal schools.
31.2 Use of Federal school facilities.
31.3 Non-Indian pupils in Indian schools.
31.4 Compulsory attendance.
31.5 Consent for transfer.
31.6 Coercion prohibited.
31.7 Handling of student funds in Federal school facilities.

AUTHORITY: Sec. 1, 41 Stat. 410; 25 U.S.C. 282, unless otherwise noted.

SOURCE: 22 FR 10533, Dec. 24, 1957, unless otherwise noted.

§ 31.0 Definitions.

As used in this part:

(a) "School district" means the local unit of school administration as defined by the laws of the State in which it is located.

(b) "Cooperative school" means a school operated under a cooperative agreement between a school district and the Bureau of Indian Affairs in conformance with State and Federal school laws and regulations.

(35 Stat. 72, 25 U.S.C. 295)

[33 FR 6472, Apr. 27, 1968]

§ 31.1 Enrollment in Federal schools.

(a) Enrollment in Bureau-operated schools is available to children of one-fourth or more degree of Indian blood reside within the exterior boundaries of Indian reservations under the jurisdiction of the Bureau of Indian Affairs or on trust or restricted lands under the jurisdiction of the Bureau of Indian Affairs except when there are other appropriate school facilities available to them as hereinafter provided in paragraph (c) of this section.

(b) Enrollment in Bureau-operated boarding schools may also be available to children of one-fourth or more degree of Indian blood who reside near the reservation when a denial of such enrollment would have a direct effect upon Bureau programs within the reservation.

(c) Children of Federal employees, whether Indian or non-Indian, are deemed eligible on the same basis as other eligible students for enrollment at facilities provided by the school district (including cooperative schools) wherein they reside.

(35 Stat. 72, 25 U.S.C. 295)

[33 FR 6473, Apr. 27, 1968; 33 FR 6968, May 9, 1968]

§ 31.2 Use of Federal school facilities.

Federal Indian school facilities may be used for community activities and for adult education activities upon approval by the superintendent or officer in charge.

§ 31.3 Non-Indian pupils in Indian schools.

Indian and non-Indian children who are not eligible for enrollment in Bureau-operated schools under § 31.1 may be enrolled in such schools under the following conditions:

(a) In boarding schools upon payment of tuition fees, which shall not exceed the per capita cost of maintenance in the school attended, when their presence will not exclude Indian pupils eligible under § 31.1.

(b) In day schools in areas where there are no other adequate free school facilities available, tuition fees may be charged for such enrollment at the discretion of the superintendent or other officer in charge provided such fees shall not exceed the tuition fees allowed or charged by the State or county in which such school is located for the children admitted in the public schools of such State or county.

(34 Stat. 1018, 35 Stat. 783, 40 Stat. 564; 25 U.S.C. 288, 289, 297)

[29 FR 5828, May 2, 1964]

§ 31.4 Compulsory attendance.

Compulsory school attendance of Indian children is provided for by law.

(60 Stat. 962; 25 U.S.C. 231)

CROSS REFERENCE: For penalties for the failure of Indians to send children to school and for contributing to the delinquency of minors, see §§ 11.65, 11.66 of this chapter.

§ 31.5 Consent for transfer.

Consent of the parents or next of kin, given before the superintendent or other duly authorized person, must be obtained before an Indian child is sent to a school beyond the limits of the State or Territory in which the reservation is located.

(Sec. 1, 28 Stat. 906; 25 U.S.C. 286)

§ 31.6 Coercion prohibited.

There shall be no coercion of children in the matter of transfers from one school to another, but voluntary enrollment should be effected through maintenance of Federal Indian schools or programs which suit the needs and interests of the areas in which they are located.

(Sec. 1, 29 Stat. 348; 25 U.S.C. 287)

§ 31.7 Handling of student funds in Federal school facilities.

The Secretary or his authorized representative may authorize officials and employees of the Bureau of Indian Affairs to accept and to disburse deposits of funds of students and student activity associations in schools operated by the Bureau in accordance with the purposes of such deposits. The following steps shall be taken to safeguard these funds:

(a) A written plan of operation shall be developed by the membership of each student activity group. The plan of operation subject to the approval of authorized officials shall outline procedures and provide for a system of accounting for the student funds commensurate with the age and grade level of the students yet adequate for financial control purposes and shall stipulate the maximum operating capital of activity.

(b) Appropriate safekeeping facilities shall be provided for all student personal and group funds and for the accounting or bookkeeping records.

(c) Employees handling student funds in cumulative amounts in excess of $100 shall be covered by a comprehensive fidelity bond the penal sum of which shall be appropriately related to fund amounts handled.

(d) Student funds accumulated in excess of the amount authorized for operating purposes by the plan of operation shall be deposited in federally insured depositories.

(e) Periodic administrative inspections and financial audit of student fund operations shall be conducted by authorized Bureau personnel.

[26 FR 10637, Nov. 14, 1961]

PART 31a—INDIAN EDUCATION POLICIES

Sec.

31a.1 Purpose and scope.
31a.2 Definitions.
31a.3 Mission statement.
31a.4 Policies.
31a.5 Evaluation of implementation of Pub. L. 95-561.

AUTHORITY: Sec. 1130 and 1133 of Title XI of the Education Amendments of 1978 (92 Stat. 2143, 2321 and 2325, Pub. L. 95-561; 25 U.S.C. 2010 and 2013).

SOURCE: 44 FR 58098, Oct. 9, 1979, unless otherwise noted.

§ 31a.1 Purpose and scope.

The purpose of this Part is to state the policies to be followed by all schools and education programs under the jurisdiction of the Bureau of Indian Affairs. Contract schools operated by Indian Tribes or Alaska Native entities may develop their independent policies, consistent with contractual obligations, or adhere to these. The adherence to the appropriate policies shall reflect the best interests of the student, the Federal government, the Tribes and Alaska Native entities, and shall be based on educationally sound judgment.

§ 31a.2 Definitions.

As used in this Part, the term:

(a) "Agency School Board" means a body, the members of which are appointed by the school boards of the schools located within such agency, and the number of such members shall be determined by the Director in consultation with the affected Tribes or Alaska Native entities except that, in agencies serving a single school, the school board of such school shall fulfill these duties.

(b) "Alaska Native" means an Indian, Eskimo, or Aleut who is a member of an Alaska Native entity.

(c) "Alaska Native Entity" means any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.).

(d) "Alaska Native Village" means any Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 689; 43 U.S.C. 1602 (c)).

(e) "Boarding School", hereinafter referred to as "residential school", means a Bureau school offering residential care and support services as well as an academic program.

(f) "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

(g) "Consultation" means a conferring process with Tribes, Alaska Native entities, and Tribal organizations on a periodic and systematic basis in which the Bureau and Department officials listen to and give effect, to the extent they can, to the views of these entities.

(h) "Contract School" means a school (other than a public school) which is Tribally operated and aided by a financial assistance contract with the Bureau.

(i) "Day School" means a Bureau school offering an academic program and certain support services such as counseling, food, transportation, etc., but excluding residential care.

(j) "Director" means the Director, Office of Indian Education Programs, Bureau of Indian Affairs.

(k) "Early Childhood Education" means comprehensive education activities with continuity of educational approach for children ages 0-8 years and their familes, appropriate for their age, development, language and culture which supplement and support usual family responsibilities for child growth and development. They are coordinated with, but do not supplant, existing educational, health, nutritional, social and other necessary services.

(l) "Exceptional Education Programs" mean the provision of services to those children who are identified as handicapped and have been found to meet the criteria of handicapped as defined in Pub. L. 94-142, and programs for gifted and talented students.

(m) "Indian" means a member of an Indian Tribe.

(n) "Indian Organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by a federally recognized Indian Tribe or Tribes, or a majority of whose members are members of federally recognized Indian Tribes.

(o) "Indian Tribe" or "Tribe" means any Indian Tribe, band, nation, rancheria, pueblo, colony, or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(p) "Local school board", when used with respect to a Bureau school, means a body chosen in accordance with the laws of the Tribe or Alaska Native entity to be served or, in the absence of such laws, elected by the parents of the Indian children attending the school, except that in schools serving a substantial number of students from different Tribes or Alaska Native entities the members shall be appointed by the governing bodies of the Tribes and entities affected; and, the number of such members shall be determined by the Director in consultation with the affected Tribes and entities.

(q) "Post-Secondary" education means any education program beyond the age of compulsory education, including higher education, career, vocational, and technical.

(r) "Tribal Organization" means an organization composed of or duly representing Tribal governments which may be national or regional in scope and function.

§ 31a.3 Mission statement.

Recognizing the special rights of Indian Tribes and Alaska Native entities and the unique government-to-government relationship of Indian Tribes and Alaska Native villages with the Federal Government as affirmed by the United States Constitution, United States Supreme Court decisions, treaties, Federal statutes, and Executive Orders, and as set out in the Congressional declaration in sections 2

and 3 of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638; 88 Stat. 2203; 25 U.S.C. 450 and 450a), it is the responsibility and goal of the Federal government to provide comprehensive education programs and services for Indians and Alaska Natives. As acknowledged in section 5 of the Indian Child Welfare Act of 1978 (Pub. L. 95-608; 92 Stat. 3069; 25 U.S.C. 1901), in the Federal Government's protection and preservation of Indian Tribes and Alaska Native villages and their resources, there is no resource more vital to such Tribes and villages than their young people and the Federal Government has a direct interest, as trustee, in protecting Indian and Alaska Native children, including their education. The mission of the Bureau of Indian Affairs, Office of Indian Education Programs, is to provide quality education opportunities from early childhood through life in accordance with the Tribes' needs for cultural and economic well-being in keeping with the wide diversity of Indian Tribes and Alaska Native villages as distinct cultural and governmental entities. The Bureau shall manifest consideration of the whole person, taking into account the spiritual, mental, physical and cultural aspects of the person within family and Tribal or Alaska Native village contexts.

§ 31a.4 Policies.

In carrying out its Education mission, the Assistant Secretary for Indian Affairs through the Director shall:

(a) *Policy making.* (1) Assure that no new policy shall be established nor any existing policy changed or modified without consultation with affected Tribes and Alaska Native Government entities.

(2) Be guided in policy formulation and funding priorities, including the proposing and awarding of contracts and grants, by periodic and systematic consultation with governing bodies of Tribes and Alaska Native entities.

(3) Ensure that Indian Tribes and Alaska Native entities fully exercise self-determination and control in planning, priority-setting, development, management, operation, staffing and evaluation in all aspects of the education process.

(4) Ensure that each agency or local school board shall be authorized and empowered to function as the policy making body for the school, consistent with the authority granted by the tribes or Alaska Native entity(ies) served by the school(s).

(b) *Student rights.* Ensure the constitutional, statutory, civil and human rights of all Indian and Alaska Native students, and respect the role of Tribal judicial systems where appropriate including, for example, ensuring that students have the right to be free from cruel and unusual punishment and that all disciplinary procedures shall be consistent with appropriate customs and practices of the appropriate Indian Tribe or Alaska Native village.

(c) *Equity funding.* Assure that resources for all education programs are equitably distributed for the benefit of all Indian and Alaska Native students, taking into account special educational needs where they exist, as further described in Part 31h of this Subchapter.

(d) *Direction of programs.* Ensure that the education function be structured in such a manner that all matters relating to the operation of education programs be administered by or be under the direction of education personnel.

(e) *Respect for family.* Promote, respect and defend the cohesiveness and integrity of the family, and Tribal and Alaska Native community, as they relate to the educational and social prerogatives of the Tribes and Alaska Native entities.

(f) *Religious freedom.* Promote and respect the right to cultural practices and religious freedom for all students, consistent with Tribal and Alaska Native entities' wishes and with the provisions of the American Indian Religious Freedom Act (92 Stat. 469; Pub. L. 95-341; 42 U.S.C. 1996)

(g) *Tribal rights regarding governing bodies and planning.*

(1) Develop in consultation with Tribes and Alaska Native entities a plan to include their direct involvement in short and long-range planning of Bureau operated post-secondary

schools through the formation of policy making governing boards.

(2) Encourage and defend the right of the Tribes and Alaska Native entities to govern their own internal affairs in all matters relating to education, and their right to determine the equitable and appropriate composition of governing boards at Bureau off-reservation and post-secondary schools.

(h) *Multilingual education.* Provide for a comprehensive multicultural and multilingual educational program including the production and use of instructional materials, culturally appropriate methodologies and teaching and learning strategies that will reinforce, preserve and maintain Indian and Alaska Native languages, cultures, and histories which school boards, Tribes and Alaska Native entities may utilize at their discretion.

(i) *Choice of school.* Afford Indian and Alaska Native students the opportunity to attend local day schools and other schools of choice and the option to attend boarding schools when the student and parent or guardian determine it is in the student's best interest and consistent with the provisions of the Indian Child Welfare Act of 1978 (Pub. L. 95-608) except that, residential schools shall not be used as substitutes for providing adequate local family social services. Each school shall establish its attendance area in cooperation with neighboring schools.

(j) *Tribal education plans.* Assist Tribes and Alaska Native entities at their request in the development of Departments of Education, education codes, and comprehensive education plans.

(k) *Advocacy and coordination.* (1) Serve as an advocate for Indian Tribes and Alaska Native entities in education matters before the Federal, State and local governments.

(2) Assume an assertive role in coordinating comprehensive support for Indian and Alaska Native students internally and from other agencies in education, mental and physical health, juvenile justice, job training, including apprenticeship programs and other related Federal, State and local programs and services.

(3) Serve as an advocate and carry out responsibilities for Indian and Alaska Native students in public and other non-Bureau operated schools consistent with the wishes of the appropriate Indian Tribes and Alaska Native entities, particularly in regard to Impact Aid (Pub. L. 81-874), Johnson-O'Malley, and all Elementary and Secondary Education Act programs.

(l) *Student assessment.* Establish and maintain a program of research and development to provide accurate and culturally specific assessment instruments to measure student performance in cooperation with Tribes and Alaska Native entities.

(m) *Recruitment of Indians.* Adopt procedures to insure that qualified Indian and Alaska Native educators are recruited for positions appropriate to their cultural background and qualifications.

(n) *Priorities in contracts and grants.* Provide financial support through contracts, grants or other funding mechanisms with first priority given to the Tribes and Alaska Native entities, Tribal organizations, Tribally controlled community colleges, and Indian or Alaska Native professional or technical assistance organizations which have the sanction of the benefitting Tribes and Alaska Native entities.

(o) *Community school concept.* Promote the community school concept by encouraging year around multi-use of educational facilities, equipment and services for Tribal, Alaska Native village, and community development.

(p) *Education close to home.* Provide day and residential educational services as close to an Indian or Alaska Native student's home as possible, except when a student elects to attend a school elsewhere for specialized curricular offerings or services.

(q) *Tribal notification and involvement and program flexibility.* (1) Notify Indian Tribes and Alaska Native entities of proposed, pending or final Federal legislation, appropriations, Solicitor's and Attorney General's opinions and court decisions affecting Indian and Alaska Native education for the purposes of information and consultation, providing them ready access at the local level to all evaluations, data records, reports and other relevant information, consistent

with the provisions of the Privacy and Freedom of Information Acts.

(2) Implement rules, regulations, procedures, practices, and standards to insure flexibility in the exercise of local Tribal or Alaska Native village options, and provide for input in periodic reviews, evaluations, and revisions to meet changing needs and circumstances.

(r) *Career and Higher Education.* (1) Ensure to the extent possible that all students who choose to pursue career and post-secondary education, including but not limited to, undergraduate and graduate programs, or preparation for skilled trades, receive adequate academic or other preparation, at the schools of their choice, assuring that students are provided adequate support services to enable them to meet their educational goals.

(2) Extend to Tribes and Alaska Native entities the prerogative of determining those critical professions and fields of study in post-secondary education which are of the highest priority to meet their economic and cultural goals.

(s) *Planning, maintenance and use of facilities.* (1) Ensure that the needs of the students and Tribal or Alaska Native community will receive first priority in the planning, design, construction, operation and maintenance of Bureau schools and residential facilities, rather than other considerations, such as ease of maintenance, and that these facilities assure a supportive environment for learning, living and recreation.

(2) Maintain all school and residential facilities to meet appropriate Tribal, State or Federal safety, health and child care standards. If a conflict exists in these standards, the Federal standard shall be followed; in the absence of a Federal standard, the Tribal standard shall be followed. In case of conflict, any such Tribal health or safety standards shall be no greater than any otherwise applicable State standard.

(t) *Alternative, innovative and exemplary programs.* Vigorously encourage and support alternative, innovative and exemplary programs reflecting Tribal or Alaska Native village specific learning styles. including but not limited to, parent-based early childhood education programs, adult and vocational technical education, library and media services, special education including programs for handicapped, gifted and talented students, summer programs, and career development.

(u) *Training.* Provide support and technical assistance at all levels for the training of duly sanctioned Tribal and Alaska Native education representatives involved in educational decisionmaking, including pre-service and in-service training for educators.

(v) *Tribally controlled community colleges.* Assist Tribes and Alaska Natives in their planning, designing, construction, operation and maintenance of Tribally controlled community colleges, consistent with all appropriate legislation. (See Part 33 of this Subchapter.)

(w) *Equal opportunity.* Establish and enforce policies and practices to guarantee equal opportunity and open access to all Indian and Alaska Native students in all matters relating to their education programs consistent with the provisions of the Privacy and Freedom of Information Acts.

(x) *Accountability, evaluation of MIS.* (1) Enforce a strict standard of fiscal, programmatic and contract accountability to the Tribes and Alaska Native entities and assist them in the development of their own standards of accountability and carry out annual evaluations of all Bureau-operated or funded education programs.

(2) Provide and make available a computerized management information system which will provide statistical information such as, but not limited to, student enrollment, curriculum, staff, facilities, student assessments and related educational information.

(y) *Accreditation.* (1) Encourage and assist all Bureau and contract schools to attain appropriate State, regional, Tribal or national accreditation.

(2) Assist and promote the establishment of Indian regional and/or national accrediting associations for all levels of Indian Education.

(z) *Eligibility for services.* Serve Indian and Alaska Native students who are recognized by the Secretary of the Interior as eligible for Federal services, because of their status as In-

dians or Alaska Natives, whose Indian blood quantum is ¼ degree or more. In the absence of other available facilities, children of non-Indian Bureau personnel or other non-eligibles may be served subject to the provisions of 25 U.S.C. 288 and 289.

(aa) *Appropriations.* Aggressively seek sufficient appropriations to carry out all policies herein established subject to the president's budget and the Department's budgetary process.

§ 31a.5 Evaluation of implementation of Pub. L. 95-561.

The Director, Office Indian Education Programs will develop guidelines for evaluating all functional and programmatic responsibilities associated with Title XI of the Education Amendments of 1978 (Pub. L. 95-561), and in the January 1, 1981 annual report, as provided in section 1136, of Pub. L. 95-561 include a statement of the specific program toward implementing these policies.

PART 31b—TRANSFER OF INDIAN EDUCATION FUNCTIONS

Sec.

31b.1 Definitions.
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AUTHORITY: Sec. 1126 Pub. L. 95-561, Education Amendments of 1978 (92 Stat. 2143, 2391; 25 U.S.C. 2006).

SOURCE: 44 FR 58103, Oct. 9, 1979, unless otherwise noted.

§31b.1 Definitions.

(a) "Agency" means that organizational unit of the Bureau which provides direct services to the governing body or bodies and members of one or more specified Indian Tribes.

(b) "Early Childhood" means education activities serving the 0 to 8 year old child, including pre-natal, child care, kindergarten, homebase, homebound, and special education programs.

(c) "Elementary and Secondary Education" means those programs serving the child from grade one through grade twelve.

(d) "Operating Level" means the organizational level at which direct educational services are performed.

(e) "Personnel Directly and Substantially Involved" means those persons who provide services which affect the operation of Indian education programs, including (but not limited to) school or institution custodial or maintenance personnel, and whose services for Indian education programs require the expenditure of at least 51 percent of the employee's working time.

(f) "Post-Secondary" means education programs that are provided for persons past the age for compulsory education to include continuing education, higher education, undergraduate and graduate, career and adult education. As used in this Act, the term Post-Secondary shall include those Bureau of Indian Affairs programs operated at Southwestern Indian Polytechnic Institute, the Institute of American Indian Arts, and Haskell Indian Junior College, and those operated at Tribally controlled community colleges under Pub. L. 95-471.

§ 31b.2 Policy.

It is the policy of the Department of the Interior that:

(a) Indian control of Indian affairs in all matters relating to education shall be facilitated.

(b) Authority to perform education functions shall be delegated directly from the Assistant Secretary—Indian Affairs to the Director, Office of Indian Education Programs.

(c) Administrative authority shall be compatible with program authorities; and, both shall be delegated to the operating level to assure efficient and effective delivery of education services to Indian children, youth, and adults.

(d) The Director, Office of Indian Education Programs shall supervise the operation of Indian education program personnel at the Arena, Agency, and the three Bureau of Indian Affairs post-secondary institutions.

(e) Indian Education program functions to be performed at the Area office level shall include those dealing

with higher education, Johnson-O'Malley aid to non-Bureau schools, off-reservation boarding schools, those education program operations serving tribes from more than one Agency except those at the three post-secondary institutions, on-reservation education functions located at an Agency where no educational personnel are assigned, education contract operations, and adult education.

§ 31b.3 Delegation of authority.

The administrative and programmatic authorities of the Assistant Secretary—Indian Affairs pertaining to Indian education functions shall not be delegated to other than the Director, Office of Indian Education Programs. The Assistant Secretary shall publish delegations of authorities to the Director in the Bureau of Indian Affairs Manual after the effective date of these regulations.

§ 31b.4 Redelegation of authority.

The authorities of the Assistant Secretary—Indian Affairs as delegated to the Director, Office of Indian Education Programs may be redelegated by the Director to a Bureau of Indian Affairs Agency Superintendent for Education, to a Bureau Area Education Programs Director, or to a President of a Bureau of Indian Affairs post-secondary education institution.

§ 31b.5 Area education functions.

A Bureau Area Education Programs Director shall perform those Bureau of Indian Affairs education functions related to Johnson-O'Malley aid to non-Bureau schools, higher education, Bureau peripheral dormitories, adult education, off-reservation residential schools, on-reservation functions located at an Agency where no education personnel are assigned, education contract operations, and those education program operations serving Tribes from more than one Agency, except those of the Bureau's post-secondary institutions.

§ 31b.6 Agency education functions.

A Bureau Agency Superintendent for Education shall perform those education functions related to elementary and secondary education, early childhood education, peripheral dormitories which have been supervised prior to Pub. L. 95-561, and exceptional education programs as defined in 25 CFR Part 31a. This Section shall not be construed to remove higher education, adult education and/or Johnson-O'Malley programs currently administered at the Agency level. Further, the Director under the authority of § 31b.4 will periodically review Area programs such as higher education, adult education, and Johnson-O'Malley for consideration to assign to Agency level administration.

§ 31b.7 Implementing procedures.

(a) The Assistant Secretary—Indian Affairs shall:

(1) Implement the transfer for Indian education functions from the jurisdiction of Agency Superintendents and Area Office Directors to the Director, Office of Indian Education Programs.

(2) Modify existing descriptions of positions for Area Office Directors, Agency Superintendents, and all other personnel directly and substantially involved with the provisions of education services by the Bureau of Indian Affairs.

(b) The Director, Office of Indian Education Programs shall:

(1) For Area, Agency, and Bureau of Indian Affairs postsecondary institutional personnel:

(i) Properly list the duties of each employee required to perform functions redelegated by the Director;

(ii) Define the responsibilities for monitoring and evaluating education programs; and

(iii) Exercise supervision of these employees.

(3) Define responsibilities for employees providing technical and coordinating assistance for support services to the Director, Office of Indian Education Programs and his/her subordinates, including procurement, contracting, personnel, and other administrative support areas.

§ 31b.8 Realignment of Area and Agency Offices.

The Assistant Secretary—Indian Affairs shall implement Bureau of Indian Affairs Area Office and Agency

Office reorganizations required to structure these offices consistent with education program activities to be undertaken at those levels.

§ 31b.9 Development of procedures.

The Director, Office of Indian Education Programs shall prepare and promulgate procedures to govern the provision of support services by the Bureau of Indian Affairs for the education function. These procedures shall be consistent with existing laws, regulations, Executive Orders, and Departmental policies governing administrative support services. These provisions shall be prepared in consultation with those personnel within the Bureau of Indian Affairs who are responsible to the Commissioner of Indian Affairs for providing support services.

§ 31b.10 Issuance of procedures.

The Assistant Secretary—Indian Affairs, directly or through the Commissioner of Indian Affairs, shall issue procedures in the Bureau of Indian Affairs Manual governing the provision of support services to the Bureau's Education Office function.

PART 31g—EDUCATION PERSONNEL

Sec.

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AUTHORITY: Sections 1131 and 1135 of the Act of November 1, 1978 (92 Stat. 2322 and 2327, 25 U.S.C. 2011 and 2015).

SOURCE: 44 FR 65013, Nov. 8, 1979, unless otherwise noted.

§ 31g.1 Scope.

(a) *Primary scope.* This part applies to all individuals appointed or converted to contract education positions as defined in § 31g.2(i) in the Bureau of Indian Affairs after November 1, 1979. This part applies to elementary and secondary school positions and agency positions in the Office of Indian Education Programs.

(b) *Secondary scope.* Section 31g.13 applies to employees with continuing tenure in both the competitive and excepted service who incumber education positions.

§ 31g.2 Definitions.

As used in this Part, the term:

(a) "Agency" means the current organization unit of the Bureau which provides direct services to the governing body or bodies and members of one or more specified Indian Tribes. The term includes Bureau Area Offices only with respect to off-reservation boarding schools administered directly by such Offices.

(b) "Agency School Board" as defined in Section 1139(1) Pub. L. 95-561, means a body, the members of which are appointed by the school boards of the schools located within such agency. The number of such members shall be determined by the Director in consultation with the affected Tribes. In agencies serving a single school, the school board of that school shall function as the Agency School Board.

(c) "Agency School Superintendent" means the Bureau Official in charge of education functions at an Agency Office and to whom the school supervisor(s) and other educators in the Agency report.

(d) "Assistant Secretary" means the Assistant Secretary for Indian Affairs of the Department of the Interior.

(e) "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

(f) "Director" means the Director of the Office of Indian Education Programs in the Bureau.

(g) "Education Function" means the administration and implementation of the Bureau's education programs and activities (including school operations).

(h) "Education Position" as defined in Section 1131(n)(1) Pub. L. 95-561, means a position in the Bureau the duties and responsibilities of which:

(1) Are performed on a school-year basis principally in a Bureau elementary or secondary school which involve:

(i) Classroom or other instruction or the supervision or direction of classroom or other instruction;

(ii) Any activity (other than teaching) which requires academic credits in educational theory and practice equal to the academic credits in educational theory and practice required for a bachelor's degree in education from an accredited institution of higher education; or

(iii) Any activity in or related to the field of education notwithstanding that academic credits in educational theory and practice are not a formal requirement for the conduct of such activity; or

(2) Are performed at the Agency level of the Bureau and involve the implementation of education-related Bureau programs. The position of Agency school superintendent is excluded.

(i) "Contract Education position" means an education position as herein defined, to which an individual employed is appointed or converted after November 1, 1979, implemented by an employment contract as herein defined.

(j) "Educator" as defined in Section 1131(n)(2) of Pub. L. 95-561, means an individual whose services are required, or who is employed, in an education position as defined in § 31g.2(h).

(k) "Employment contract" means a signed agreement executed by and between the Bureau and the individual employee hired or converted under this part, which specifies the position title, period of employment, and compensation attached thereto. The individual contract shall be subject to valid provisions of any collective bargaining agreement during the term of the contract.

(l) "Local School Board" as defined in Section 1139(7), Pub. L. 95-561 means a body chosen in accordance with the laws of the Tribe to be served or, in the absence of such laws, elected by the parents of the Indian children attending a Bureau school. In schools serving a substantial number of students from different Tribes, the members shall be appointed by the governing bodies of the Tribes affected and the number of such members shall be determined by the Director in consultation with the affected Tribes.

(m) "School Board" means an Agency school board or a local school board.

(n) "School Supervisor" means the Bureau official in charge of a Bureau school and who reports to an Agency school superintendent. In the case of an off-reservation boarding school, the school supervisor will report to the Area Education Program Administrator.

(o) "Consulted" as provided in Section 1131(d)(1)(B)(C), Pub. L. 95-561, means providing pertinent information to and being available for discussion with the school board, giving the school board the opportunity to reply, and giving due consideration to the school board's response.

§ 31g.3 Education positions.

(a) The Director shall establish the kinds of positions required to carry out the Bureau's education function. No position will be established or continued for which:

(1) Funds are not available; or

(2) There is not a clearly demonstrable need and intent for it to be filled to carry out an education function.

(b) Positions established for regular school operations will be restricted to school year or program duration. Particular care shall be taken to insure that year long positions are clearly required and involve essential 12 month assignments.

§ 31g.4 Qualifications for educators.

(a) *Qualifications related to positions.* Job qualification requirements shall be equivalent to those established by the appropriate licensing and certification authorities of the State in which the position is located.

(1) The Director shall consult with the respective State Education Agency and national certification authorities to determine which parts of such State's requirements for education po-

sitions in early childhood, elementary, and secondary programs may not be relevant to or appropriate for the education operations of the Bureau in such State. For those parts which are not relevant or appropriate, the Director shall establish and publish in the Bureau Manual (BIAM) suitable requirements which are directly and materially applicable to such Bureau education positions.

(b) *Qualifications related to individuals.* An applicant for an education position must establish that he/she meets the requirements of the position by submitting an application to the local school supervisor, Agency Superintendent for Education, or Director and appearing for an interview if requested by the official involved. The applicant's education and experience will be subject to verification. Falsification may result in disciplinary action or removal from the position to which he/she was appointed. Specific requirements and exceptions are as follows:

(1) The best qualified group of educators on a list of applicants will include those who have a record of:

(i) Successful teaching,

(ii) Practice teaching, or

(iii) A practicum course which, by State standards, equates to practice teaching, or

(iv) For administrative positions, successful experience in school administration, or coursework required by States' standards.

(2) School boards may waive formal education and State certification requirements for tribal members who are hired to teach tribal culture and language. Tribal members appointed to teaching positions, with a waiver of formal education and State certification requirements, may not have their basic pay rate set higher than the rate paid to qualified educators at that locale.

(c) *Identification of qualified individuals.* The Director shall require each Agency Superintendent for Education and other appropriate local officials in the education program organization to maintain lists of qualified and interviewed applicants for each of the kinds of established positions. Applications on file shall be purged annually. Only applicants whose qualifications are established and who indicate an interest in working only in specific locations may be included on such local applicant lists. The Director shall maintain a national list of qualified applicants for each of the kinds of positions established. Applicants whose qualifications are established and who either do not indicate an interest in a specific location or do indicate an interest in working anywhere will be entered on the national list. The national list is a secondary source of applicants.

(d) *Special Recruitment and training for Indian educators.* The Director shall implement a recruitment program to attract qualified Indians for education positions. The program shall describe opportunities for advancement and define steps required for promotion from within the Bureau. The promotion program for all professional supervisory positions and professional staff positions shall require a minimum of six months tutored work experience by the applicant during the school year at the advanced position (or a comparable position) under the tutorage of a competent educator already holding such a position. Selected tutors will design a training plan for approval by the Director which shall provide opportunities for experiences in every phase of the position, including a minimum monthly evaluation, and final certification of successful or unsuccessful completion according to established criteria. Unsuccessful trainees may reapply for training. Successful trainees shall be eligible for promotion.

§ 31g.5 Basic compensation for educators and education positions.

(a) *Schedule of basic compensation rates.* The Director shall establish and publish in the Bureau Manual (BIAM) a schedule of basic annual compensation rates for educators and education positions. The schedule shall be comparable to the rates in effect under the General Schedule for individuals with comparable qualifications, and holding comparable positions, to whom Chapter 51 of Title 5 U.S.C. is applicable. Pay rates in the Education Pay Schedule will be indicated on an

hourly basis, and steps in each pay level will be comparable to a specific grade and step of the General Schedule. The maximum pay for a contract position shall not exceed step 10 of the GS pay rate for a comparable position which is subject to the Classification Act by more than 5%. Positions may be identified for and subject to this limitation. This will result in a maximum pay at some step below the top of the assigned pay level. A position cannot exceed this limitation unless more difficult or responsible duties are assigned to the position.

(b) *Special additions to basic compensation.* The Director is authorized to establish the following special additions to rates of basic compensation.

(1) Each educator employed in a contract education position in Alaska shall be paid a cost-of-living allowance not to exceed 25 per centum of his/her rate of basic compensation before any other additions are computed.

(2) The Director may authorize payment of a staffing differential not exceeding 25 per centum of the rate of basic compensation based on a formally documented request by an Agency Superintendent for Education. Such a staffing differential shall only be authorized in writing when the Director determines that:

(i) It is warranted by the geographic isolation of the work site or other unusually difficult environmental working or living conditions, and

(ii) It is necessary as a recruitment or retention incentive. This staff differential is to be computed on the basic schedule rate before any other additions are computed.

(iii) Justification must be provided as indicated in paragraph (b)(3) of this section.

(3) Special rates may be established for recruitment and retention applicable only to a specific position or to specific types of positions in specific locations based on a formally documented request by an Agency Superintendent for Education and submitted to the Director for recommendation to the Office of Personnel Management. The request from the Agency Superintendent for Education must show numbers of losses of personnel, and/or unusually difficult working and/or living conditions, which are specifically related to differences in total compensation, including benefits, offered by the Bureau and the education organizations with which the Bureau is competing for local recruitment and retention.

§ 31g.6 Appointment of educators.

(a) *Local school employees.* Local Bureau school employees shall be appointed only by the school supervisor. Before the local school employee is employed the school board shall be consulted. An individual's appointment may be finalized only upon receipt of a formal, written approval certified by the local school board under such uniform procedures as it may adopt. Written determination by the school board should be received within a reasonable period, not to exceed 30 days. Failure of the school board to act within this period shall have the effect of approval of the proposed appointment. The local school board should use the same procedure to disapprove an appointment. Within ten (10) calendar days of receipt, the school supervisor may appeal any determination by the local school board concerning an individual's appointment to the Agency Superintendent for Education or for off-reservation boarding schools only to the Area Education Program Administrator. Within ten (10) calendar days following receipt of an appeal, the Agency Superintendent for Education or Area Education Program Administrator as appropriate may reverse the determination for good cause set out in writing to the school board. Failure to act within such ten (10) calendar day periods shall have the effect of approval of the local school board's determination.

(b) *School supervisors.* School supervisors may be appointed only by the Agency Superintendent for Education. The Area Education Program Administrator will appoint school supervisors for off-reservation boarding schools only. Before the school supervisor is employed, the school board shall be consulted. The appointment may be finalized only upon receipt of a formal, written approval certified by the school board under such uniform pro-

cedures as it may adopt. Written determination by the school board should be received within a reasonable period, not to exceed 30 days. Failure of the school board to act within this period shall have the effect of approval of the proposed appointment. The school board should use the same procedure to disapprove an appointment. Within twenty (20) calendar days of receipt, the Agency Superintendent for Education, or Area Education Program Administrator, as appropriate, may appeal to the Director any determination by the school board concerning an individual's appointment. Within twenty (20) calendar days following receipt of an appeal, the Director may reverse the determination for good cause set out in writing to the school board. Failure to act within such twenty (20) calendar day period shall have the effect of approval of the school board's determination.

(c) *Agency office education program employees.* Appointments to Agency office education positions may be made only by the Agency Superintendent for Education. Before the agency education employee is employed, the Agency school board shall be consulted. The appointment may be finalized only upon receipt of a formal, written approval certified by the Agency school board under such uniform procedures as it may adopt. Written determination by the school board should be received within a reasonable period, not to exceed 30 days. Failure of the school board to act within this period shall have the effect of approval of the proposed appointment. The Agency school board should use the same procedure to disapprove an appointment. Within twenty (20) calendar days of receipt, the Agency Superintendent for Education may appeal to the Director any determination by the school board concerning an individual's appointment. Within twenty (20) calendar days following receipt of an appeal, the Director may reverse the determination for good cause set out in writing to the school board. Failure to act within such twenty (20) calendar day periods shall have the effect of approval of the school board's determination.

(d) *Employment Contracts.* The Bureau shall issue employment contracts each year for employment in contract education positions at the Agency and schools levels.

(e) *Contract Renewals.* The appropriate school board shall be notified by the school supervisor and/or Agency Superintendent for Education not less than ninety (90) days before the expiration of an individual's contract whether that contract is or is not recommended for renewal. If the school board disagrees with the school supervisor's or Agency Superintendent for Education's recommendations, the board should submit a formal, written certification of its determinations to the school supervisor or Agency Superintendent for Education within twenty-five (25) days. If the board's determinations are not received within the twenty-five (25) days, the school supervisor or Agency Superintendent for Education shall issue the required sixty (60) days notification of renewal or non-renewal to the individuals under § 31g.10(c). Where the school board submits its recommendation within the twenty-five (25) days, the school supervisor or Agency Superintendent for Education shall implement the board's determination through issuance of the required sixty day notice of renewal or nonrenewal as appropriate.

(f) *Absence of local school boards.* In the event that a local school board has not been established in accordance with Section 1139(7) Pub. L. 95-561 with respect to a Bureau school, or is effectively defunct, then in situations where the local school board is required to be given a notice or required to be consulted, by statute or these regulations, the official involved shall notify or consult with the Agency school board serving the tribe to which the parents of the Indian children attending that school belong, or in its absence, the tribal organization of the tribe involved.

(g) *Conditional appointment.* As provided in Section 1131(d)(4), Pub. L. 95-561, if an individual who has applied at both the national and local levels is appointed from a local list of applicants, the appointment shall be conditional for ninety (90) days.

During that period, the individual's application and background shall be examined to detemine if there is a more qualified individual for the position. Removal during this period is not subject to discharge, hearing or grievance procedures.

(h) *Short term contracts.* (1) There may be circumstances where immediate action is necessary and it is impossible to consult with the local school board. When this situation exists short term contracts may be made by the school supervisor in accordance with the following:

(i) The length of the contract will not exceed sixty (60) days, or the next regularly scheduled school board meeting, whichever comes first.

(ii) If the board meets and does not take action on the individual in question, the short term contract may be extended for the duration of the school year.

(iii) It shall be the responsibility of the school supervisor to fully inform the local school board of all such short term contracts. Failure to do so may be cited as reason to discharge the school supervisor if so requested by the board.

(2) The local school board may authorize the school supervisor to make an emergency short term contract to classroom, dormitory and other positions directly related to the health and safety of students. When this situation exists short term contracts may be made in accordance with the following:

(i) If local and agency lists of qualified applicants are exhausted, short term contracts may be made without regard to qualifications for the position;

(ii) The pay level will be based on the qualifications of the individual employed rather than the requirements of the position;

(iii) The short term contract may not exceed the school year and may not be renewed or extended;

(iv) Every sixty (60) days the school supervisor will determine if qualified individuals have been placed on the local or agency lists. If a qualified individual on the list accepts employment, the school supervisor must terminate the emergency appointment at the time the qualified individual is appointed.

(i) *Waiver of Indian preference.* As provided in Section 1131(f)(1) Pub. L. 95-561, "Notwithstanding any provision of the Indian preference laws, such laws shall not apply in the case of any personnel action within the purview of this section respecting an employee not entitled to Indian preference if each tribal organization concerned grants, in writing, a waiver of the application of such laws with respect to such personnel action, where such a waiver is in writing deemed to be a necessity by the tribal organization, except that this shall in no way relieve the Bureau of its responsibility to issue timely and adequate announcements and advertisements concerning any such personnel action if it is intended to fill a vacancy (no matter how such vacancy is created)." When a waiver is granted it shall not be construed to extend to or be a precedent for any other case.

(j) *Prohibited reappointment.* An educator who voluntarily terminates employment before the end of the school year may not be appointed to another Bureau education position before the beginning of the following school year. An educator will not be deemed to have voluntarily terminated employment if transferred elsewhere with the Bureau's consent.

§ 31g.7 Discharge of educators.

(a) *Discharge for cause.* Educators covered under the provision of this section are excluded from coverage under 5 U.S.C. 7511 and 4303. In order to provide due process for educators, the Director shall publish in the Bureau Manual (BIAM) the conditions which could result in the discharge of educators for cause, and procedures to be followed in discharge cases.

(b) *Discharge for inadequate performance.* Action taken to remove educators for inadequate performance will be taken for failure to meet performance standards established under 5 U.S.C. 4302. Performance standards for all educators will include, among others, lack of student achievement and willful failure to exercise properly assigned supervisory responsibilities by supervisors.

(c) *Other discharge.* The Director shall publish in the Bureau Manual (BIAM) a description of the budgetary and program conditions that may result in the discharge of educators for other than cause during the school year. The individual's personnel record will clearly reflect that the action taken is based upon budgetary or program restraints and is not a reflection on the employee's performance.

(d) *Procedures for discharge for cause.* The Director shall publish in the Bureau Manual (BIAM) the procedural steps to be followed by school supervisors and Agency Superintendents for Education in discharge for cause cases. These procedures shall provide (among other things) for the following:

(1) The educator to be discharged shall receive a written notice of the proposal specifying the causes or complaints upon which the proposal is based, not less than thirty (30) calendar days before the discharge. However, this shall not prohibit the exclusion of the individual from the education facility in cases where exclusion is required for the safety of the students or the orderly operation of the facility.

(2) A reasonable time, but not less than ten (10) days to make a written and oral response to the charge.

(3) The opportunity to review the material relied upon to support the charge.

(4) Official time, not to exceed 8 hours, to prepare a response to the charge.

(5) The educator may elect to have a representative; and if so, shall furnish the identity of the representative. The Agency Superintendent for Education may disallow, as an employee's representative, an individual whose activities as a representative would cause a conflict of interest or position or an employee whose release from his or her official position would give rise to unreasonable costs to the Government or when priority work assignment precludes his/her or release from official duties. 5 U.S.C. 7114(a)(5) and the terms of any applicable collective bargaining agreement govern representation for employees in an exclusive bargaining unit.

(6) A right to a final decision made by the appropriate level of supervision.

(7) A right to appeal the final decision and review of merits of the case by a Departmental official not previously involved in the merits of the case. This right includes entitlement to a hearing upon request under procedures that comport with the requirements of due process in accordance with Section 1131(e)(1)(B), Pub. L. 95–561.

(e)(1) The appropriate school board will be notified as soon as possible, but in no case later then ten (10) calendar days from the date of issue of the notice of intent to discharge.

(2) The appropriate school board, under such uniform procedure as it may adopt, may issue a formal written certification to the school supervisor or the Agency Superintendent for Education either approving or disapproving the discharge before the expiration of the notice period and before actual discharge. Failure to respond before the expiration of the notice period will have the affect of approving the discharge.

(3) The school supervisor initiating a discharge action may appeal the board's determination within ten (10) calendar days of receipt to the Agency Superintendent for Education or in the case of off-reservation boarding schools only, the Area Education Program Administrator. The Agency Superintendent for Education initiating a discharge may appeal the board's determination within ten (10) calendar days of receipt to the Director. Within twenty (20) calendar days following the receipt of an appeal, the reviewing official may, for good cause, reverse the school board's determination by a notice in writing to the board. Failure to act within such twenty (20) calendar days shall have the affect of approving the board's determination.

(f) *School board recommendations for discharge.* School boards may recommend to school supervisors, school superintendents and the Director that individuals in the Education program be discharged. These recommendations may follow any form internally

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established by the school board or tribal government. However, in order to obtain a positive relief of the problem, the recommendation should contain specific causes or complaints which may be verified or established by investigation of factual situations. The official receiving a board recommendation for discharge of an individual shall acknowledge the recommendation in writing within ten (10) calendar days and proceed with a fact finding investigation. The official who finally disposes of the recommendation shall notify the school board of the disposition in writing within sixty (60) calendar days.

§ 31g.8 Entitlement of educators to compensation.

(a) *F.L.S.A. exempt educators with administratively established compensation rates.* Educators whose rate of basic compensation is administratively established and who are exempt from the overtime provisions of the Fair Labor Standards Act are entitled only to:

(1) The basic rate of compensation established for the position to which they are appointed.

(2) Any additional compensation established under § 31g.5(b) which may be applicable to the position to which the individual is appointed.

(b) *F.L.S.A. non-exempt educators with administratively established compensation rates.* Educators whose rate of basic compensation is administratively established and who are not exempt from the overtime provisions of the Fair Labor Standards Act are entitled to:

(1) The basic rate of compensation established for the position to which they are appointed.

(2) The overtime pay to which they may be entitled by the work schedule to which they are assigned by application of the Fair Labor Standards Act or Chapter 55 of Title 5, U.S.C., whichever is greater.

(3) Any additional compensation established under § 31g.5(b) which may be applicable to the position to which the individual is appointed.

(4) Premium pay other than overtime pay to which they may be entitled under Chapter 55 of Title 5 U.S.C.

§ 31g.9 Payment of compensation to educators.

(a) *Pay periods.* Educators shall be paid on the basis of a bi-weekly pay period during the term of the contract. Chapter 55 of Title 5 U.S.C. applies to the administration of pay for educators, except that section 1131(m) of Pub. L. 95-561 provides that 5 U.S.C. 5533 does not apply with respect to the receipt of pay by educators during summer recess under certain circumstances.

(b) *Pay for school year educators.* When an educator is appointed after the beginning of the school year, payment under the contract is to begin as of the date of appointment. If an educator resigns or is discharged before the expiration of the term of the contract, pay ceases as of the date of resignation or discharge.

§ 31g.10 Conditions of employment of educators.

(a) *Supervision not delegated to school boards.* School boards may not direct, control, or interrupt the day-to-day activities of the Bureau of Indian Affairs employees carrying out Bureau-operated Education programs.

(b) *Employee handbook.* The Director will develop employee handbooks and recruiting guides in consultation with school boards. These handbooks and recruiting guides will provide specific information regarding:

(1) The working and hiring conditions for various tribal jurisdictions and Bureau locations;

(2) The need for all Education personnel to adapt to local situation; and

(3) That all Education personnel will be required to comply with and support duly adopted school board policies, including those relating to tribal culture or language.

(c) *Contract renewal notification.* Employees will be notified sixty (60) days before the end of the school year whether or not their contract is to be renewed. If an individual's contract is to be renewed, the individual must agree in writing to serve for the next school year. This agreement must be made within fourteen (14) calendar days of the date of the notice in order to complete the contract renewal. If an individual agrees to serve for the

next school year and fails to report for duty at the beginning of the next school year, the contract will be cancelled and the individual's future appointment will be subject to the restriction in § 31g.6(k) of this Part. Non-renewal of a contract will not have the effect of discharge for cause.

(d) *Dual compensation.* An employee accepting a renewal of a school year contract may be appointed to another federal position during the school recess period without regard to the dual compensation regulations in 5 U.S.C. 5533.

(e) *Discrimination complaints.* EEO procedures established under 5 CFR 713 shall be applicable to contract employees under this part.

(f)(1) *Grievance procedure.* The Director shall publish in the Bureau Manual (BIAM) procedures for the rapid and equitable resolution of grievances.

(2) When a unit of exclusive recognition exists, the negotiated grievance procedure may be the only procedure available to the employee for resolving grievances within its coverage, except that, if the grievance involves discharge, the employee may elect to use the appellate procedures or the grievance procedures if applicable, but not both. (5 U.S.C. 7121(e)(1)).

(g) *Mid-term review with school boards.* The school supervisor and the Agency school superintendent shall schedule a mid-term meeting with their school boards for the specific purpose of obtaining the school board's comments and suggestions concerning individual employees. In order to facilitate the school board's knowledge of school and Agency Education Office operations, members may observe education operations. Members should be encouraged and assisted in frequent and unannounced observations of classroom and dormitory. However, the members' conduct during such observation must be in accord with § 31g.10 (a).

(h) *Performance evaluation.* The minimum number of times an educator shall be evaluated each year is three for the educator's first year in a school or Agency, two for the second year, and one for each year following. The annual performance evaluation shall be in accordance with 5 U.S.C. 4302.

§ 31g.11 Length of the school year.

(a) The length of the school year shall be at least one hundred eighty (180) student instructional days.

§ 31g.12 Leave system for education personnel.

(a) *School year employees.* Employees on a school year contract are authorized the following types of leave:

(1) *Emergency leave.* Absence approved by the school supervisor or Agency Superintendent for Education as a recognized personal emergency may be paid for up to forty (40) hours for instructional or other work days in a school year. This leave is precredited at the beginning of the school year and accrued at the rate of four (4) hours for each of the following ten (10) months. If an employee resigns during the school year, any emergency leave used but not accrued shall be deducted from the final salary check.

(2) *Sick leave.* Absence approved by the school supervisor or Agency Superintendent for Education as incapacity from duty due to injury or illness, not related to or incurred on-the-job, and not covered by Federal Employee's Compensation Act Regulations may be paid as follows:

(i) Sick leave shall accrue at the rate of four (4) hours for each bi-weekly pay period during the terms of the contract. No precredit or advance sick leave is authorized. Accrued an unused sick leave may be used at contract termination to be added to length of service for retirement credit purposes.

(ii) Sick leave is available only for situations which incapacitate the employee from duty and the leave granting officials shall require satisfactory evidence that the employee was incapacitated and unable to return to duty.

(iii) Sick leave in any school year used on instructional or other work days is limited to one hundred sixty (160) hours except as provided in paragraph (a)(2)(iv) of this section.

(iv) Accrued sick leave in excess of one hundred sixty (160) hours shall only be used to provide salary continuation for major medical emergencies.

The Agency Superintendent for Education will determine on the basis of evidence which may include a report by a Federal physician, certification by the employee's personal physician, or other suitable evidence, whether or not to grant such requests. Any Federal employee may be required to appear for a physical examination by a Federally-selected physician (i.e., PHS, contract, etc.) to determine fitness for duty.

(v) An employee, who terminates his/her contract with sick leave to his/her credit, will have such sick leave restored to his/her credit upon re-employment within 5 years.

(3) *School vacation leave.* Contract school year employees may receive up to one hundred thirty six (136) hours of school vacation leave when school is not in session. Approval for the use of this leave will be administratively determined by the school supervisor/ Agency Superintendent for Education.

(b) *Leave for year long employees.* Employees who are on a year contract are authorized the following types of leave:

(1) *Vacation Leave.* Absence approved in advance by the school supervisor or Agency Superintendent for Education for rest and relaxation is authorized for eighty hours after each of the first three (3) years of service as a Bureau education employee. At the end of the fourth year of service, the number of hours is increased to one hundred sixty (160). The school supervisor will determine when vacation leave may be used. Vacation leave is to be scheduled and used to the greatest extent possible during periods when school is not in session and the students are not in the dormitories. Vacation leave is credited to an employee on the day following his/her anniversary date of employment and may not be accumulated from year to year. However, if an employee's leave is scheduled during the three months preceding the anniversary date, and must be cancelled and not rescheduled before the anniversary date because Agency operations require the employee's presence, it may be restored and used the following year. At the employee's option, unused vacation leave may be converted to sick leave at the completion of each contract year, or he/she may elect to be paid for unused vacation leave.

(2) *Sick leave.* Sick leave accumulation and use is authorized on the same basis as for school year employees under § 31g.12 (a) of this part.

(c) *Accountable absences.* Each employee is accountable for the following types of absence which must be recorded:

(1) *Unapproved absence.* Any absence from the work site during any period when the employee's presence is required and which is not approved in advance or excused by the school supervisor or Agency Superintendent for Education, and charged to another type of leave or accountable absence, must be recorded. An amount equal to the pay which would have been due for the period of the absence shall be deducted from the employee's pay.

(2) *Unpaid absence.* If prescheduled and approved by the school supervisor or Agency Superintendent for Education, an employee may be absent and an amount equal to the pay, which would have been due for the period of the absence will be deducted from the employee's pay.

(3) *Court and military leave.* Employees are entitled to paid absence for jury or witness service and military duty as a member of the National Guard or reserve as defined in sections 6322 and 6323 of Title 5, U.S.C., when the absence occurs during the regular contract period. Employees may be requested to schedule their military leave at times other than when school is in session.

(4) *Administrative leave.* An employee may be excused, in pay status, from the performance of regular duties to carry out other officially recognized tasks when approved by the school supervisor or the Agency Superintendent for Education.

(d) *Leave transferred in.* Annual leave credited to an employee's balance immediately before conversion or appointment under this part will not be available for use while so employed by the Bureau. It shall be held to the employee's account until the employee leaves such Bureau employment. Sick leave credited to an employee's balance immediately before conversion or

appointment under this part shall be credited to the employee's sick leave account under the leave system in § 31g.12 (a)(2) and (b)(2).

(e) Employees issued contracts for intermittent or part-time work, such as substitute teacher, and employees hired under short term contract provisions are not eligible for leave.

§ 31g.13 Status quo employees in education positions.

(a) *Status quo employees.* Individuals who were Bureau employees on October 31, 1979, with an appointment in either the competitive or excepted service without time limitation, and who are serving in an Education position, shall be continued in their positions under the terms and conditions of that appointment with no change in their status or position; except, they may be promoted to the full performance level of the position as that level was defined before November 1, 1979, with no other change in the position. Such employees are entitled to receive any changes in compensation attached to the position. Even though such employees occupy "Education positions" as defined in this part, the terms and conditions of their appointment, status, and entitlements are determined by competitive service regulations and procedures. Before November 1, 1983, these employees may elect to have the terms and conditions of their appointment to the position which they hold converted to the terms and conditions of employment established under this part. This election may not be revoked and is not subject to supervisory or school board approval. Under applicable procedures, these employees are eligible for consideration for movement to other positions which are defined as "contract Education" positions. Such movement shall change the terms and conditions of their appointment to the terms and conditions of employment established under this part. An involuntary change in position shall not affect the current status of present education employees.

PART 31h—THE INDIAN SCHOOL EQUALIZATION PROGRAM

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AUTHORITY: Sec. 1128 of Title XI of the Education Amendments of 1978, (92 Stat. 2320, 25 U.S.C. 2008).

SOURCE: 44 FR 61864, Oct. 26, 1979, unless otherwise noted.

Subpart A—General

§ 31h.1 Purpose and scope.

The purpose of this rule is to provide for the uniform direct funding of BIA operated and tribally operated day schools, boarding schools, and dormitories. These rules apply to all schools and dormitories and administrative units which are funded through the Indian School Equalization Program of the Bureau of Indian Affairs.

§ 31h.2 Definitions.

Assistance under this rule is subject to the following definitions and requirements relating to fiscal and administrative matters. Definitions of terms that are used throughout the part are included in this subpart. As used in this part, the term:

(a) "Agency" means an organizational unit of the Bureau which provides direct services to the governing body or bodies and members of one or more specified Indian Tribes. The term includes Bureau Area Offices only with respect to off-reservation boarding schools administered directly by such Offices.

(b) "Agency school board" means a body, the members of which are appointed by the school boards of the schools located within such agency, and the number of such members shall be determined by the Director in consultation with the affected tribes, except that, in Agencies serving a single school, the school board of such school shall fulfill these duties.

(c) "Agency Superintendent of Education" or "Superintendent" means the Bureau official in charge of Bureau education programs and functions in an Agency who reports to the Director.

(d) "Area Director for Education" means the Bureau official in charge of Bureau Education programs and functions in a Bureau Area Office and who reports to the Director.

(e) "Assistant Secretary" means the Assistant Secretary of Indian Affairs, Department of the Interior, or his or her designee.

(f) "Average daily membership" or "ADM" means the average of the actual membership in the school, for each student classification given separate weightings in the formula. Only those eligible students shall be counted as members who are:

(1) Listed on the current roll of the school counting them during the count week;

(2) Not listed as enrolled in any other school during the same period; and

(3) In actual attendance at the school counting them at least one full day during the count week in which they are counted.

(g) "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

(h) "Decision of record" means a formal written confirmation of a voted action by a school board during a formally constituted school board meeting.

(i) "Director" means the Director of the Office of Indian Education Programs for the Bureau of Indian Affairs, or his or her designee.

(j) "Eligible student" means an Indian student properly enrolled in a Bureau school or dormitory, or a tribally operated school or dormitory funded by the Bureau, who meets the applicable entry criteria for the program(s) in which he or she is enrolled.

(k) "Entitlement" means that amount of funds generated by the Indian School Equalization Formula for the operational support of each school.

(l) "Advice of allotment" means the formula written document advising a school or an administrative office of its entitlement under the formula. The advice of allotment conveys legal authority to obligate and expend funds in a given fiscal year.

(m) "Allotment" means the amount of the obligational authority conveyed to a given school or Bureau administrative office by its advice of allotment in a given fiscal year.

(n) "Indian" means a person who is a member of an Indian tribe.

(o) "Indian Tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(p) "Program" means each or any subset of the Indian School Equalization Program (ISEP), but not the ISEP itself, for which a separately computable dollar amount may be generated by a school. Each program classification is a cost account in an accounting system. The following ac-

counting programs are those established by this part:

(1) Instructional costs;

(2) Boarding costs;

(3) Dormitory costs;

(4) Bilingual instruction costs;

(5) Exceptional child education costs;

(6) Intense residential guidance costs;

(7) Student transportation fund costs;

(8) School maintenance and repair fund costs;

(9) School board training fund costs;

(10) Pre-kindergarten costs; and

(11) Previously private contract school operation and maintenance costs.

(q) "School" means an educational or residential center operated by or under contract with the Bureau of Indian Affairs offering services to Indian students under the authority of a local school board and the direction of a local school supervisor. A school may be located on more than one physical site. The term "school", unless otherwise specified, is meant to encompass day schools, boarding schools, previously private schools, cooperative schools, contract schools and dormitories as those terms are commonly used.

(r) "Local School Board," (usually referred to as "school board") including off-reservation boarding school boards and dormitory school boards, when used with respect to a Bureau school, means a body chosen to exercise the functions of a school board with respect to a particular Bureau operated or funded school, in accordance with the laws of the tribe to be served or, in the absence of such laws, elected for similar purpose by the parents of the Indian children attending the school, except that in schools serving a substantial number of students from different tribes, the members shall be appointed by the governing bodies of the tribes affected; and the number of such members shall be determined by the Director in consultation with the affected tribes.

(s) "Supervisor" or "local school supervisor" means the individual in the position of ultimate authority at any Bureau administered or tribally operated contract school.

(t) "Tribally operated contract school" or "contract school" means a school (other than a public school) which is financially assisted under a contract with the Bureau.

(u) "Weighted student unit (WSU)" means the measure of student membership adjusted by the weights or ratios used as factors in the Indian School Equalization Formula established in § 31h.10 below. The term weighted student unit also describes the measure by which supplements to the weighted student count at any school are augmented as the result of the application of small school supplements or Alaskan school supplements.

§ 31h.3 General provisions.

(a) All funds appropriated by the Congress for the support and administration of Bureau operated or contracted elementary and secondary educational purposes and programs shall be allocated in accordance with, and be distributed through, the Indian School Equalization Program, unless a specific amount of funds are added or reduced for a particular class of schools through the budget and appropriations process.

(b) Each expenditure of funds authorized in Part 31h is without exception subject to the availability of funds.

Subpart B—The Indian School Equalization Formula

§ 31h.10 Establishment of the formula.

There is hereby established the Indian School Equalization Formula (ISEF).

Funds for the instruction and residential care of Indian children shall be earned as an entitlement by each local school according to a weighted student unit formula. The funds allocated through the formula shall be computed as follows:

(a) The basic instructional average daily membership (ADM) shall be counted at each school location as provided for in Subpart C of this part. From the application of ratios or weights as provided in these rules a

weighted student unit (WSU) value for each school location is derived by multiplying the student count for each program area by the weights.

(b) If the school is a boarding school or a dormitory, the residential students will produce program units which will, by the application of weights, produce additional WSU's.

(c) The ADM count of eligible small schools or dormitories may generate additional unit supplements.

(d) All Alaskan schools are eligible under the formula to generate supplemental units.

(e) The total weighted student unit count for each school location is then multiplied by a base unit value to derive the estimated dollar entitlement to each school(s).

The total amount is made available to each school(s), under the rules related to administrative provisions provided in Subparts C and D of this part.

§ 31h.11 Definitions.

Assistance to approved school(s) under this subpart is subject to the definitions established in § 31h.2 and to the following definitions for determining student counts in the various weighted areas. As used in the subpart, the term:

(a) "Base" or "base unit" means both the weight or ratio of 1.0 and the dollar value annually established for that weight or ratio which represents students in grades 4 through 8 in a typical instructional program.

(b) "Basic program" means the instructional program provided all students at any age level exclusive of any supplemental programs which are not provided to all students in day or boarding schools.

(c) "Grade" or "Grade Level", followed in most cases by "K" or a number, means a classroom grouping ordinarily determined by student age and successful completion of a criterion number of years of previous schoolwork. The use of this term does not preclude ISEP funding of programs in which instruction is "nongraded" or "individualized", or which otherwise depart from grade-level school structure. For purposes of funding under the ISEP, students in such programs shall be counted as "in the grade level" to which they would ordinarily be assigned based on their chronological age and number of years of schooling completed.

(d) "Grades 1-3" means a weighted program for a student who is present during the count week (see § 31h.30(b)) in grades 1 through 3 who is at least 6 years old by December 31 of the fall of the school year during which the count occurs and is a member of an educational program approved by the board which is conducted at least six gross hours daily during at least 180 days per school year. Gross hours means from the start of the school day to the end of the school day including all activities.

(e) "Grades 4-8" and "grades 9-12" means a weighted program for a student who is present during the count week (see § 31h.30(b)) in either of the programs encompassing grades 4 through 12 who is a member of an educational program approved by the school(s) at least six gross hours daily during at least 180 days per school year and shall not have achieved the age of 21 nor have received a high school diploma or its equivalent.

(f) "Kindergarten" means a weighted program for a student who is present during the count week (see § 31h.30(b)) who is at least 5 years old by December 31 of the fall of the school year during which the count occurs and a member of an educational program approved by the school(s) conducted at least four gross hours daily during at least 180 days per school year. Otherwise eligible students who are in a program conducted less than four hours daily, but at least two gross hours daily are eligible as "half-time kindergarten" students.

(g) "Intense Bilingual" means a weighted program for a student who is present during the count week, whose primary language is not English, and who is receiving academic instruction daily through oral and/or written forms of an Indian or Alaskan Native language, as well as specialized instruction in English for non-native speakers of English, under resources of the ISEP.

(h) "Intensive residential guidance" means the weighted program for a resident student that needs special

residential services due to one or more of the problems identified below, and that appropriate documentation is in that student's file as follows:

(1) Presenting problem:

(i) Court of juvenile authority request for placement resulting from a pattern of infractions of the law.

(ii) Explusion from previous school under due process.

(iii) Referral by a licensed psychologist, psychiatrist or certified psychiatric social worker as an emotionally disturbed student.

(iv) History of truancy more than 50 days in the last school year or a pattern of extreme disruptive behavior.

(2) Documentation required:

(i) Written request signed by officer of court or juvenile authority;

(ii) Certification by expelling school;

(iii) Psychologist, certified psychiatric social worker, or psychiatrist report; or

(iv) Attendance and behavior data from records of prior school, court records, or from social agency records and a written documentation summarizing such data. For all students placed in intensive residential guidance programs, there shall be further documentation of a diagnostic workup, a placement decision by a minimum of three staff members, and a record of an individualized treatment plan for each student that specifies service objectives.

(v) No student shall be classified under "Intense residential guidance" who is eligible for services at a full-time or part-time service level because of a handicapping condition as defined under Exceptional Child programs below.

(i) "Exceptional Child Program" means weighted programs for students who are receiving special education and related services, consistent with the identification, evaluation and provisions of a free appropriate public education required by Part B of the Education of the Handicapped Act (20 U.S.C. 1401 et seq.; 45 CFR 121 a.) and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794; 45 CFR 84) and who have the following diagnosed impairments:

(1) "Deaf" means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

(2) "Hard of hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of "deaf" in this section.

(3) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(4) "Severely Multi-handicapped" means concomitant impairments (such as mentally retarded-blind; mentally retarded-deaf) the combination of which causes such severe educational problems that they cannot be accommodated in regular educational programs or in special education programs solely for one of the impairments. The term includes deaf-blind children.

(5) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).

(6) "Other health impaired" means limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, hemophelia, epilepsy, lead poisoning, leukemia, or diabetes or the existence of a physical or mental impairment which substantially limits one or more major life activities, but which is not covered in paragraphs (i) (1)-(12) of this section.

(7) "Emotionally disturbed" means a condition exhibiting one or more of the following characteristics over a long period of time and to a significant degree, which adversely affects educational performance and requires small

group instruction, supervision, and group counseling:

(i) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers:

(iii) Inappropriate types of behavior or feelings under normal circumstances;

(iv) A general pervasive mood of unhappiness or depression; or

(v) A tendency to develop physical symptoms or fears associated with personal or school problems.

(8) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an inability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of vision, hearing, or motor handicaps, or mental retardation, or of environmental, cultural, or economic disadvantage.

(9) "Speech impaired" means a communication disorder, such as stuttering, impaired articulation, or a voice impairment, which adversely affects a child's educational performance.

(10) "Visually handicapped" means a visual impairment which, even with correction, adversely affects a child's educational performance. The term includes partially seeing, but not fully blind, children.

(11) "Severely emotionally disturbed" means a condition such as schizophrenia, autism or the presence of the following characteristics over a prolonged period of time and to a marked degree, which seriously affects educational performance and requires intensive individual therapy (which may be conducted either in or out of the school setting), individual instruction, and supervision:

(i) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers:

(iii) Inappropriate types of behavior or feelings under normal circumstances;

(iv) A general pervasive mood of unhappiness or depression; or

(v) A tendency to develop physical symptoms or fears associated with personal or school problems.

(12) "Severely and profoundly retarded" means a degree of mental retardation (as defined in paragraph (3) above) which severely restricts and delays major aspects of intellectual functioning so as to require intensive small group instruction and supervision.

(13) "Students requiring home/hospital based instruction" means students provided a program of instruction in a home or hospital setting because in the judgement of a physician a student cannot receive instruction in a regular public school facility without endangering the health or safety of the student or of other students.

(14) "Multihandicapped" means concomitant impairments (such as mentally retarded with a minor additional handicap such as speech impaired) the combination of which causes educational problems that can not be accommodated in regular education programs or in part-time special education programs.

(15) "Blind" means the possession of a central vision acuity of 20/200 or less in the better eye with correcting glasses or a peripheral field of vision so contracted that its widest diameter is less than 20%.

(16) "Full-time—High Service Level" means a program of special education and related services provided to an exceptional student which consists of fifteen or more hours per week (or 60% or more of the total instructional time) of instruction and/or required related services (as described in the students individualized education program), provided outside of the regular classroom. In geographically isolated, smaller schools where facilities are limited, a full time program may consist of fifteen or more hours per week (or 60% or more of the total instructional time) of specialized individual

or small group instruction or required related services regardless of where the services are actually provided (including the regular classroom).

(17) "Part-time—Moderate Service Level" means any program of regular education modified to provide specialized instruction and/or required related services (as described in the student's individualized education program) which does not provide at least the number of hours in the definition of "Full-time—High Service Level Exceptional Child Program" set forth in paragraph (i)(14) above.

(18) Classification of a student in full or part-time service levels in residential care programs shall be based upon prior classification of the student in an instructional program serving his/her handicapping condition.

(j) "Resident" means a student officially enrolled in the residential care program of a Bureau operated or funded school and actually receiving supplemental services provided to all students who are provided room and board in a boarding school or a dormitory during those weeks when student membership counts are conducted. Such students must be members of the instructional program in the same boarding school in which they are counted as residents. To be counted as dormitory residents, students must be enrolled in and be current members of a public school in the community in which they reside.

§ 31h.12 Entitlement for instructional purposes.

BIA educational funds for the instruction of elementary and secondary Indian children shall be computed according to the following weighted student unit factors:

Basic Programs	*Base Weights*
Kindergarten	1.00
Grades 1 to 3	1.20
Grades 4 to 8	1.00
Grades 9 to 12	1.30
Supplemental Program	*Add-on Weight*
Intense bilingual	.20
Exceptional Child Programs	
Full time—high service level:	
Deaf	3.00
Blind	3.00
Severely multihandicapped	3.00
Severely and profoundly retarded	3.00
Students requiring hospital/homebound instruction	3.00
Severely emotionally disturbed	3.00
Severely emotionally disturbed (nonsevere)	1.00
Specific learning disabled	1.00
Mentally retarded	1.00
Part time—modertate service level:	
Emotionally disturbed	.50
Specific learning disabled	.50
Mentally retarded	.50
Multihandicapped	.50
Hard of hearing	.25
Visually handicapped	.25
Orthopedically impaired	.25
Other health impaired	.25
Speech inpaired	.25

§ 31h.13 Entitlement for residential purposes.

Basic funds for student residential purposes shall be computed according to the following weighted student unit factors:

Basic Programs	*Add-on Weight*
Kindergarten (For FY 80 only, 0 factor thereafter)	1.40
Grades 1 to 3	1.40
Grades 4 to 8	1.25
Grades 9 to 12	1.25
Exceptional Child Programs	*Add-on Weight*
All full-time handicapped students	.50
Part time:	
Orthopedically impaired	.25
Other health impaired	.25
Emotionally disturbed	.25
Mentally retarded	.25
Multihandicapped	.25
Intense Residential Guidance	.50

§ 31h.14 Entitlement for small schools.

To compensate for the additional costs of operating small schools, qualified schools shall receive the following adjustments:

(a) Instructional programs in day and boarding schools. For each separate small school having an instructional average daily membership count (called x) of less than 100 students, the formula [(100-x) divided by 200] times x shall be used to generate add-on weighted pupil units for each such school.

(b) *Boarding school residential programs.* For each separate small boarding school having a resident average daily membership count (called y) of less than 100 students, the formula [(100−y) divided by 200] times y shall be used to generate add-on weighted pupil units for each such boarding school.

(c) *Dormitory residential programs serving public schools.* For each small dormitory program having an average daily membership count (called z) of less than 100 students, the formula [(100−z) divided by 200] times z shall be used to generate add-on weighted pupil units for each dormitory.

§ 31h.15 Alaskan school cost supplements.

To meet the statutory requirements for a salary supplement for Alaskan educational staff, and add-on weight of .25 will be used as a factor by which all pupil program-generated weighted students shall be supplemented. Such generated Alaskan cost supplements will be added to the weighted pupil units generated by each school in the same manner as small school units.

§ 31h.16 Computation of school entitlements.

The sum of all weighted student units, including any small school and any Alaskan school cost supplements shall be computed for each school under the management of the Director. The total number of units generated by each approved school shall be multiplied by a base dollar value which is equivalent to a base weight of 1.0 in the formula. This base value shall be computed annually by the Director by dividing the total of all weighted students (WSU) generated by all approved schools into the total amount appropriated for distribution through the Indian School Equalization Formula.

§ 31h.17 Comparability with public schools.

(a) In no case shall a Bureau or contract school attended by an Indian student receive less under these regulations than the average payment from the Federal funds received per Indian student, under other provisions of law, by the public school district in which the student resides. Any school which is funded at a lower level per student under the ISEP than either the average daily expenditure per student for instructional costs in the public schools in the State in which it is located, or the amount per Indian student which the local public school district in which it is located receives from all Federal funding sources, shall present documentation of this fact to the Director of the Office of Indian Education Programs.

(b) Upon verification that comparisons in the documentation received cover comparative expenditures, and that the inequity indeed exists, the Director shall adjust the school's allocation to equal the payment per-Indian student of the public school district or State involved.

(c) Funds for such adjustment shall be taken from the Formula Implementation Set Aside established under § 31h.78 of these regulations.

§ 31h.18 Recomputations of current year entitlements.

The Director shall continuously monitor the processes by which the final allocation of each school's entitlement is made. When changes occur either in the total amount of funds available for the operations of schools or in the total number of weighted student units for all schools due to a change in the number of weighted student units reported or altered by auditing, the Director shall consider whether adjustments are necessary in order that the full available appropriations are fairly allocated to the schools, and that all funds are fully allotted to schools.

§ 31h.19 Phase-in provisions.

(a) *Limits on excess gains.* No school shall receive a percentage increase in its total fund entitlement, over the comparable budget amount per school in the FY 79 Bureau Education budget, which is greater than the following percentage ratios:

(1) In FY 80—20%

(2) In FY 81—70%

(b) *Limits on excess losses.* No school shall receive a percentage decrease in its total fund entitlement, below the comparable budget amount in the FY 79 Bureau Education budget, which is greater than the following percentage ratios:

(1) In FY 80—10%

(2) In FY 81—30%

(c) *Effects of limits on losses and gains.* Local school gains in excess of the above percentage limits for each of the limited years shall be returned

to the common base for all schools and distributed through the formula. Funds to limit losses in excess of the above limits shall be withdrawn from the common base for all schools and distributed to the schools subject to such excess losses.

(d) *Transfer of fiscal accountability.* To allow time for developing fiscal accountability, knowledge, skill and responsibility at the local school level and in order to support accountability by responsible Fiscal Agents under section 3679 of the Revised Statutes (the Anti-Deficiency Act), a period of one year (FY 1980) shall be used during which the legal allottee for each Bureau-operated school shall be the Education Superintendent of the Agency within which the school is located. In the case of off-reservation boarding schools and other Bureau-operated schools not served by an Agency Education Office, the Area Education Director shall be the legal allottee. Further allocation of funds under this rule shall be fully in accordance with the Indian School Equalization Program and Formula, and expenditures shall be made in accordance with the financial planning provisions of section E of this rule.

(e) Beginning in FY 1981, the allottee shall be as otherwise determined in this rule.

§ 31h.20 Development of uniform, objective and auditable student weighted area placement criteria and guidelines.

The Director shall develop: (a) Uniform, objective and auditable placement criteria and guidelines for placement of students in dormitories and residential care programs of boarding schools and in special weighted program areas which expand upon the definitions in this part; and (b) a uniform and auditable system of enrollment criteria and attendance boundaries for each school in the Bureau educational program. The Director shall publish these criteria and guidelines in the Bureau Manual (BIAM) and widely disseminate them to each school prior to September 1, 1980, so that appropriate student placments can occur before the FY 1981 October student count.

§ 31h.21 Future considerations for weighted programs.

(a) Within twelve months of the final publication of this rule, the Director shall review the following factors in depth, and determine whether to incorporate each into the weighted pupil formula:

(1) A rural isolation adjustment.

(2) A staff cost adjustment.

(3) A gifted and talented student program.

(4) A vocational education program.

(5) A facilities operation and maintenance program.

(6) Additional institutional size factors.

(b) The Director may also recommend incorporation of other factors, based upon the Bureau's experience in the first year's operation of the ISEP, and upon the Standards to be developed under Section 1121 of the Act.

(c) The Director shall also review the adequacy of the weighted factors, procedures, criteria and definitions now in this rule, throughout Part 31h. On the basis of this review, the Director shall present a comprehensive report of findings, with recommendations for amendment of this rule, to the Secretary, who shall incorporate them in a Notice of Proposed Rulemaking to include a minimum of sixty (60) days for public comment.

§ 31h.22 Authorization of new program development, and termination of programs.

(a) Within one year of the final publication of this rule, the Secretary shall develop uniform procedures and criteria for the authorization of new schools where no Bureau funded or operated school program has previously existed, and for authorization of expansions of existing Bureau funded or operated school programs to serve additional age groups not previously served. These procedures and criteria shall be published as amendments to this rule under a new Notice of Proposed Rulemaking, which shall contain provisions for a minimum of sixty (60) days of public review and comment prior to final publication.

(b) Procedures and criteria developed under this section shall be integrated with existing procedures under

25 CFR 271 for determining contractable functions of the Bureau, in order to produce a coherent system for authorization of Tribally initiated program development under contracting procedures of Pub. L. 93-638, which is compatible with Bureau initiated program development.

(c) Procedures and criteria developed under this rule shall also contain provisions for making decisions regarding closing schools and terminating Bureau programs of education. These shall provide for full consultation with the Indian persons and Tribes served by the programs and schools involved in any such decisions.

§ 31h.23 Review of contract schools supplemental funds.

Before the end of formula phase-in, the Director shall consider the impact on equalization of supplemental funds appropriated for aid to schools under the Johnson O'Malley Act and under Title IV of the Indian Education Act, which are available to contract schools but not to Bureau schools, and determine appropriate adjustments, if any. Any adjustments in the ISEP which results from this review shall be effected by formal revision of this rule, under a Notice of Intended Rulemaking published in the FEDERAL REGISTER, and shall be subject to public comment for a minimum of sixty (60) days prior to final rulemaking.

Subpart C—Formula Funding Administrative Procedures

§ 31h.30 Definitions.

As used in this subpart, the term:

(a) "Certifying the validity of student counts" means that counts of student ADM have been accurately recorded in compliance with specifications of these rules, and that the Agency Superintendent of Schools, the local school supervisor, and local school board chairperson, where a school board exists, testify to and confirm the correctness of this count.

(b) "Count weeks" mean the first full school week in October and the first full school week in November for recording student ADM for the purposes of calculating allotments, and the first full school week in February and the first full school week in March for recording student ADM for purposes of calculating tentative allotments.

(c) "Cumulative total" means the sum of all daily student ADM counts during count weeks.

(d) "Student classification" means any special need area of students which receives a separate weighting through the Indian School Equalization Formula.

§ 31h.31 Conditions of eligibility for funding.

(a) To be eligible for direct formula funding as established in Subpart B of this part, a day school, boarding school, or dormitory must meet minimum standards, or, failing to do so, must include in its financial plan steps acceptable to the Director for taking corrective action to meet the standards to be prescribed pursuant to section 1121 of the Education Amendments of 1978 (Pub. L. 95-561; 25 U.S.C. 2001). Until such standards are prescribed, the Director shall determine eligibility for funding in accordance with established procedures for authorizing Bureau operated schools.

(b) To be eligible for direct formula funding, a tribally operated day or boarding school or dormitory must meet the requirements of Part 271 of this chapter (25 CFR 271) for receipt of Bureau Education funds under contracts for school operation.

§ 31h.32 Annual computation of average daily membership.

(a) Average daily membership (ADM) as defined in § 31h.1(f) shall be determined during the first full school week in October and the first full school work week in November of the school year. For each count week all those students eligible under the definition in § 31h.1(f) shall be counted by student program classification. An average for the two count weeks shall be computed to two decimal places for each student program classification as separately provided for in the funding formula.

(b) The Director shall direct the receipt and management of information necessary to obtain timely ADM re-

ports from schools. Agency education offices, and, in the case of off-reservation boarding schools, Area education offices, together with each school's supervisor and school board chairperson where a board exists, shall be responsible for certifying the validity of each school's student counts. The October and November ADM will be used to determine final entitlements for the school year.

§ 31h.33 Special education unduplicated count provision.

In counting special education ADM with the exception of speech therapy, no child shall be counted or funded twice for participation in more than one special education program.

§ 31h.34 Substitution of a count week.

A school may petition the Director to substitute another week in the same month for the specified count week if it can be established that to use the specified count week would result in grossly inaccurate student counts. Where tribal ceremonial days are known in advance, such a petition shall be submitted in advance of the determined count week.

§ 31h.35 Computation of average daily membership (ADM) for tentative allotments.

Tentative allotments for each future year's funding shall be based on the average daily membership for the first full school week in February and the first full school week in March of the school year. Procedures for computation shall be the same as those of the annual computation in October and November.

§ 31h.36 Declining enrollment provision.

If the decline of a school's average daily membership exceeds ten percent in any given school year, the school may elect to request funding based on the average ADM for February and March of the previous year and October and November of the current year.

§ 31h.37 Auditing of student counts.

The Secretary shall provide for auditors as required to assure timeliness and validity in reporting student counts for formula funding.

§ 31h.38 Failure to provide timely and accurate student counts.

(a) Responsible Bureau school, Agency, Area, and Central Office administrators may be dismissed for cause, or otherwise penalized, for submission of invalid or fraudulent annual student ADM counts or willfully inaccurate counts of student participation in weighed program areas. A person who knowingly submits or causes to be submitted to a Federal official or employee false information upon which the expenditure of Federal funds is based, may be subject to criminal prosecution under provisions such as sections 286, 287, 371, or 1001 of Title 18, U.S. Code.

(b) Failure of responsible Federal officials to perform administrative operations which are essential to the ISEP, on a timely basis, shall result in swift disciplinary action by Bureau supervisory personnel, under existing procedures. Failure or refusal of Bureau supervisory personnel to take disciplinary action shall result in disciplinary action against them by higher level supervisors.

§ 31h.39 Delays in submission of ADM counts.

(a) If a Bureau operated or funded school delays submission of an ADM count, by more than (2) weeks beyond the final count week in November, for that school, the Director shall set aside an amount equal to the tentative allotment for that school out of the funds available for allotment, and shall proceed to compute the initial allotments for all other schools in the Bureau school system, based upon remaining funds available for allotment. The allotment for the school which has failed to submit a timely ADM count shall be computed when the ADM count is received, but shall not exceed the amount set aside therefore. Any amount remaining in the set-aside fund, after computation of the allotment, shall be transferred into the Formula Implementation Set-Aside Fund, and distributed in accordance with provisions of § 31h.78 below.

(b) In no case shall the Director delay the computation of initial allotments for schools which have submitted timely ADM counts while waiting

for those schools which have failed to submit.

Subpart D—Direct Allotment of Formula Entitlements

§ 31h.50 Definitions.

As used in this subpart, the term:

(a) "Apportionment" means that part of a school's allotment received each quarter as an authorization to obligate funds.

(b) "Approved apportionment schedules" means that approval given for the quarterly obligation of funds for a given appropriation of funds for the Bureau.

(c) "Authorization to obligate" means that approval given to a school to incur obligations of funds against a given appropriation.

(d) "Initial allotments" means that notice given to schools of their entitlements to funds based on October and November student counts through the Indian School Equilization Formula based on a final appropriation, prior to any adjustments due to fluctuating student counts.

(e) "Responsible fiscal agent" means the local school supervisor of a Bureau operated school except where such authority is designated to the Agency Superintendent of Education by a school board decision of record or by a written agreement signed by both parties. For contract schools, the responsible fiscal agent shall be designated in an action of record by the contractor.

(f) "Tentative allotments" means that notice given to schools of their entitlements to funds based on February and March student counts as computed through the Indian School Equilization Formula based on a proposed appropriations in the President's budget for the next fiscal year.

§ 31h.51 Notice of tentative allotments.

The Director shall notify school administrators and boards of tentative allotments of funds based on the February and March ADM counts established under Subpart B of this Part no later than April 15, preceding the year for which the allotment is to be made as authorized by Pub. L. 95-561, section 1129, Title XI.

§ 31h.52 Initial allotments.

The Assistant Secretary—Indian Affairs, as requested by the Director, shall make initial allotments to Bureau operated schools, Agency Education Offices, and Central and Area Offices. The Assistant Secretary—Indian Affairs shall make initial allotments for tribally operated schools to appropriate Agency Superintendents of Education, or as otherwise provided by the Director.

§ 31h.53 Obligation of funds.

(a) Authority to obligate funds in the Bureau operated schools shall be governed by provisions of the Bureau Manual (42 BIAM).

(b) Authority to obligate funds in tribally operated contract schools shall be governed by contracting procedures of 25 CFR 271.

(c) Authority to obligate funds in all Bureau funded and operated schools shall be based upon the tentative allotment (§ 31h.51) for the period beginning October 1 of any fiscal year. The tentative allotment as restricted by a continuing resolution, if applicable, would govern until computation and notification of initial allotments as described in this sub-part, as adjusted by the Director in accordance with §§ 31h.75, 31h.78, 31h.90, 31h.102 and 31h.111.

§ 31h.54 Apportionment of entitlements to schools.

(a) *Bureau operated schools.* The Director shall make quarterly apportionments directly to the local school supervisor or to the school's responsible fiscal agent as specifically delegated in accordance with § 31h.55 of this part. Such quarterly apportionments will be made as determined in § 31h.53 of this part.

(b) *Contract schools.* The Agency Superintendent of Education, or another agent as designated by the Director, shall be responsible through the contracting officer in accordance with 25 CFR 271 for effecting and adjusting contracts with tribally operated schools.

§ 31h.55 Responsible local fiscal agent.

The responsible fiscal agent shall:

[illegible] 0 80 9

(a) Expend funds solely in accordance with the local educational financial plan, as ratified or amended by the local school board, unless in the case of Bureau operated schools, this plan has been overturned under the appeal process prescribed in these rules, in which case expenditures shall be made in accordance with the local educational financial plan as determined by the Agency Superintendent of Education.

(b) Sign all documents required for the obligation and or payment of funds and documentation of receipt of goods and services.

(c) Report at least quarterly to the local school board on the amounts expended, amounts obligated and amounts currently remaining in funds budgeted for each program of services in the local financial plan.

(d) Recommend changes in budget amounts, as required for effective management of resources to carry out the local financial plan, and incorporate such changes in the budget as are ratified by the local school board, subject to provisions for appeal and overturn.

§ 31h.56 Financial records.

Each responsible fiscal agent receiving funds under the ISEP shall maintain expenditure records in accordance with financial planning system procedures as required herein.

§ 31h.57 Access to and retention of local educational financial records.

The Comptroller General, the Assistant Secretary, the Director, or any of their duly authorized representatives shall have access for audit and examination purposes to any of the local schools' accounts, documents, papers and records which are related or pertinent to the school's operation. The provisions of 25 CFR 271.47 will be applicable in the case of tribally contracted schools.

§ 31h.58 Expenditure limitations for Bureau operated schools.

(a) Expenditure of allotments shall be made in accordance with applicable federal regulations and local education financial plans, as defined in § 31h.60(b), below.

(b) Where there is disagreement between the Area or Agency support service staff and the responsible fiscal agent regarding the propriety of the obligation or disbursement of funds, appeal shall be made to the Director.

Subpart E—Local Educational Financial Plan

§ 31h.60 Definitions.

As used in this subpart, the term:

(a) "Consultation" means soliciting and recording the opinions of school boards regarding each element in the local financial plan, as set forth below, and incorporating those opinions to the greatest degree feasible in the development of the local educational financial plan at each stage thereof.

(b) "Local educational financial plan" means that plan which programs dollars for educational services for a particular Bureau operated or funded school which has been ratified in an action of record by the local school board, or determined by the superintendent under the appeal process set forth in this subpart.

(c) "Budget" means that element in the local educational financial plan which shows all costs of the plan by discrete programs and sub-cost categories thereunder.

§ 31h.61 Development of local educational financial plans.

A local educational financial plan shall be developed by the local school supervisor, in active consultation with the local school board, based on the tentative allotment received as provided in § 31h.51.

§ 31h.62 Minimum requirements.

The local financial plan shall include, at a minimum, each of the following elements:

(a) Separate programing of funds for each group of Indian students for whom a discrete program of services is to be provided. This must include at a minimum each program for which funds are allotted to the school through the Indian School Equalization Program;

(b) A brief description, or outline, of the program of student services to be provided for each group identified;

(c) A budget showing the costs projected for each program, as determined by the Director through the development of a uniform cost accounting system related to the Indian School Equalization Program;

(d) A statement of the percentage relationship between the total of the anticipated costs for each program and the amount the students served by that program will generate under the Indian School Equalization Formula. Beginning in FY 1981, there shall also be included a statement of the cost incurred for each program in the preceding fiscal year and the amount received for each such program as the result of the Indian School Equalization Formula. For exceptional child programs the plan must provide that at least 80% of the funds generated by students served by the program be spent on those students;

(e) A provision for certification by the chairman of the school board that the plan as shown, or as amended, has been ratified in an action of record by the school board; or

(f) Except in the case of contract schools, a provision for certification by the Agency Superintendent of Education that he or she has approved the plan as shown, or as amended, in an action overturning the rejection or amendment of the plan by the school board.

§ 31h.63 Procedures for development of the plan.

(a)(1) Within thirty (30) days after receipt of the tentative allotment for the coming school year, the school supervisor shall meet and consult with the local school board on the local financial plan.

(2) The school supervisor shall discuss at this meeting the present program of the school and any proposed changes he or she wishes to recommend. The school board members shall be given every opportunity to express their own ideas as well as their views on the supervisor's recommendations. Subsequently the school supervisor shall present a draft plan to the school board with recommendations concerning each of the elements outlined in this sub-part.

(b) Within sixty (60) days of receipt of the tentative allotment, the school board shall review the local financial plan as prepared by the school supervisor and, by a quorum vote, shall have the authority to ratify, reject or amend such financial plan.

(c) The school board shall have the authority, at any time following the ratification of the financial plan on its own determination or in response to the supervisor, to revise such plan to meet needs not foreseen at the time of preparation of the plan.

(d) If the supervisor does not wish to file an appeal, he or she shall transmit a copy of the approved local financial plan within two weeks of the school board action, along with the official documentation of the school board action, to the office of the Agency Superintendent of Education. Later revisions to the financial plan must be transmitted in the same manner.

(e) In the event that the school board does not act within the prescribed deadline, the financial plan shall be referred to the Agency Superintendent of Education for ratification, subject to subsequent amendment by the school board in accordance with paragraph (c) above.

(f) The Agency Superintendent of Education will review the local financial plan for compliance with prescribed laws and regulations or may refer the plan to the Solicitor's Office for legal review. If the Superintendent notes any problem with the plan, he or she shall notify the local board and local supervisor of the problem within two weeks of receipt of the local financial plan and shall make arrangements to assist the local school supervisor and board to correct the problem. If the Superintendent is not able to correct the problem, it shall be referred to the Director of the Office of Indian Education.

§ 31h.64 Procedures for financial plan appeals.

(a) If the supervisor of a school finds an action of the local school board, in rejecting or amending the local financial plan, to be unacceptable in his or

her judgment as a professional educator, the supervisor may appeal to the Agency Superintendent of Education under the following procedures and conditions:

(1) The appeal must be presented in writing, within ten (10) consecutive days of the supervisor's receipt of the school board decision which is appealed.

(2) The written appeal shall contain, at a minimum, the following information and documentation:

(i) All descriptive information concerning the element(s) in the local financial plan being appealed, substantially as presented to the school board prior to its decision.

(ii) Official documentation of the school board's decision amending or rejecting the element(s) being appealed.

(iii) A statement of the school supervisor's reasons for appealing the board's actions.

(iv) Signed certification by the supervisor that his/her reason for appeal has been presented to the chairperson of the school board, and that the school board has been offered full opportunity to submit a counter statement to the Superintendent.

(3) If the supervisor of the school is also the Superintendent, the appeal shall be made following the above procedures to the Director, who shall follow procedures set forth below, as acting Superintendent for the appeal.

(b) Within ten (10) consecutive days of receiving the appeal, the Agency Superintendent of Education shall review the appeal documents to determine if they are complete according to the criteria established in this subpart, and if so shall notify both the school supervisor and the school board of a date for an informal conference.

(c) Within twenty-five (25) consecutive days of receiving the referral for approval, the Superintendent shall:

(1) Hear any arguments on either or both sides of the appeal issue(s) at the option of either the supervisor of the school board involved.

(2) Following the informal conference, either sustain or reject the appeal for good cause, which the Superintendent shall set out in writing to both the supervisor and school board.

(d) Nothing in this subsection shall be construed as enabling the supervisor of a tribally operated school to appeal decisions of a contract school board to the Agency Superintendent for Education, nor as empowering the Agency Superintendent for Education to overturn any action of a contract school board under this appeal process as established in Pub. L. 93-638.

(e) Within 180 days after the effective date of this subpart, the Assistant Secretary shall develop and publish in the FEDERAL REGISTER procedures for a formal hearing process which shall be available to school boards who believe their decisions regarding the financial plan have been overturned for other than good cause.

Subpart F—Contingency Funds

§ 31h.70 Definitions.

As used in this subpart, the term:

(a) "Cumulative total" means the sum of all funds carried over from the previous fiscal year(s) as unobligated and the amount for the current year.

(b) "Temporary replacement" means the substitution of a structure on a temporary basis in lieu of the original permanent structure that has been lost to use. The temporary use will expire at the time that arrangements are completed for the availability of a structure similar to the original.

§ 31h.71 Establishment of the School Disaster Contingency Fund.

The Bureau's annual budget justifications shall identify an amount for a separate budget account entitled the School Disaster Contingency Fund (SDCF). All schools and dormitories receiving support under the provisions of subparts B and C of this part are eligible for disaster aid from this contingency fund.

§ 31h.72 Continuing and cumulative provisions.

Unobligated funds from the School Disaster Contingency Fund shall be continued over at the end of a fiscal year in the same account for the next year, except when otherwise provided in appropriations acts. New funds shall be added when appropriated but

the Fund should not exceed a $1.5 million cumulative total unless otherwise determined by the Assistant Secretary.

§ 31h.73 Purposes.

Disbursements from the School Disaster Contingency Fund shall be for the following purposes:

(a) Costs of replacement of items in the following categories including shipment and installation, in the event of their destruction by earthquake, fire, flood, storm, or other "acts of God," and acts of massive and catastrophic vandalism where such costs are not already covered in an insurance policy in force at the time of destruction and where such destruction could not have been prevented by prudent action by the officials responsible for the care of such items:

(1) Educational materials and supplies.

(2) Equipment and furnishings.

(3) Dormitory materials and supplies, for student use, and dormitory equipment and furnishings, including those necessary for staff living space, if integral to the dormitory operation.

(4) Food services supplies, furnishings and equipment not a fixed part of structures.

(5) Office supplies and equipment for minimum essential administrative operations.

(6) Janitorial supplies and cleaning equipment.

(7) Student clothing and personal supplies if destroyed along with a school facility.

(8) Fuel supplies, tanks, lines, connections, meters, etc.

(9) Transportation equipment not otherwise provided for through the General Services Administration.

(10) Costs of repair of utility systems or components thereof, as necessary to restore utility services.

(b) Costs of temporary replacement of school facilities in the event of their destruction by earthquake, fire, flood, storm or other "acts of God," until they can be reconstructed. These costs may include purchase of or movement of portable structures, including costs of delivery, installation, and connection to utility systems. They may also include costs of any fixed equipment which is integral to such structures. Structure types for which such temporary replacement costs may be paid or reimbursed are as follows:

(1) Employee quarters, if required for employee housing due to the isolation of the duty station, and on other housing is available within a reasonable commuting distance. Reasonable commuting distance will be determined under existing policies or by the Director.

(2) Dormitories, including employee apartment space if integral to the operation of the dormitory.

(3) Offices required for minimum essential administrative operations at the local school level.

(4) Academic facilities, including classrooms, kindergartens, libraries and special instructional spaces such as vocational shops and home economics rooms.

(5) Kitchens and dining facilities, including laundry and multipurpose spaces.

(6) Infirmaries, clinics and health service spaces, in school locations in which such services are not otherwise available.

(7) Separate restroom facilities, if none are otherwise available for operation of instructional and dormitory programs.

§ 31h.74 Application procedures.

Application for disbursement from the School Disaster Contingency Fund shall be made to the Director of the Office of Indian Education Programs, through the Agency Superintendent of Education for the school affected. Applications shall be subject to review and comment by the Superintendent, and the Area Director for Education of the Area in which the school is located, but shall not require the approval of these officers. Such review and comment activities shall be carried out concurrently with the Director's processing of the application so that there are no delays in the transmission of the application to the Director. The Director shall develop such application forms and requests for information and documentation as are necessary to prove both loss and the fact that replacement costs are outside the normal budgetary capacity

of the school operation at either the local school, Agency or Area levels.

§ 31h.75 Disbursement procedures.

Disbursements from the SDCF shall be made only on the direct authorization of the Director, on the merits of each such application received, on a first come, first served basis and in amounts determined at the Director's discretion in accordance with the purposes and expenditure prohibitions set forth in this section.

§ 31h.76 Prohibitions of expenditures.

(a) The following costs shall not be reimbursed or paid under the SDCF:

(1) Capital expenditures for construction of permanent facilities.

(2) Capital expenditures for reconstruction or refurbishment of facilities no longer in use except where such expenditure is the most cost effective way of temporarily replacing other destroyed facilities.

(3) Temporary replacement of facilities or replacement of equipment which has simply become outmoded and obsolete, or which has been "condemned" or declared unserviceable by administrative procedures, which is either still in existence or has been razed or destroyed as the result of an administrative decision.

(4) Costs of continued normal program operations which are not increased by a disaster.

(5) Personnel costs, except for temporary personnel hired to meet an emergency situation.

(6) Start-up costs for new or expanding school programs.

(7) Costs of repairs necessitated by neglect, or failure to provide routine scheduled maintenance and minor repair.

(8) Replacement costs of personal property of school employees, regardless of value or circumstances of destruction.

(9) General budgetary shortfalls due to improper fiscal management.

(10) Budgetary shortfalls from a past fiscal period, after funds have been carried forward in the SDCF to a new fiscal period.

(11) Costs of replacement of items stolen or destroyed by deliberate vandalism, neglect, or abandonment.

(12) Costs of items, services or activities for which budgetary provisions are made in other budget categories of the Bureau not subject to distribution under the Indian School Equalization Program.

(b) Temporary replacement costs for the following structure types shall not be paid or reimbursed from the SDCF:

(1) Recreational structures, such as auditoriums, field houses, clubs, canteens, chapels, student centers, grandstands, gymnasiums, etc.

(2) Auxiliary buildings not used in student instructional or dormitory programs, such as warehouses, storage sheds, garages, firehouses, maintenance shops, law enforcement centers, instructional materials and audiovisual centers, and employees' clubs.

(3) Temporary replacement costs shall be paid or reimbursed only to the extent necessary to permit expeditious continued operation of the school dormitory care programs affected by the destruction of facilities.

§ 31h.77 Transfer of funds from Facilities Engineering for other contingencies.

In order to reimburse schools for the costs of unforeseen and extraordinary procurement costs and for major repairs of reconstruction resulting from the disaster, the Director may request a transfer of funds from funds appropriated for Bureau Facilities Engineering to the School Disaster Contingency Fund for such purposes. When a separate formula is established by regulation for school maintenance and operations, an appropriate separate contingency fund shall be established to cover such costs.

§ 31h.78 Establishment of a formula implementation set-aside fund.

There shall be set aside an amount not to exceed $2 million dollars to be used during fiscal year 1980 by the Director to facilitate the implementation of formula funding under this part. The fund is to provide the means of adjusting particular local school entitlements which are allocated in error due to underprojections, data error, misclassification of students, and similar reporting errors, or to provide for the initial funding of new schools under the formula, which have been

started after the spring ADM counts, without reducing allotments made for other schools. Balances in this set-aside fund shall be apportioned through the formula during the first week in April by the Director or at such earlier time as he or she deems that significant ADM reporting fluctuations have ceased.

§ 31h.79 Prohibition.

The formula implementation set-aside fund shall not be used as a discretionary fund by the Director for any purpose, and it shall be allocated solely through the Indian School Equalization Formula.

Subpart G—School Board Training

§ 31h.90 Establishment of a school board training fund.

An amount shall be set aside annually for the purpose of providing training for school board members as authorized by Pub. L. 95-561, section 1129(d). Each school board shall receive a flat sum, initially for FY 1980 to be set at $5,000, with Alaska and off-reservation boarding schools to receive an additional 25 percent of this flat sum amount per annum.

§ 31h.91 Other technical assistance and training.

The provision of funds under § 31h.90 above does not relieve the Director of the responsibility for assuring that adequate technical assistance and training services are provided to school boards to the greatest extent possible. The provision of assistance under this subpart does not preclude a school board or its trial governing body from receiving financial or other assistance from the Bureau under the Indian Self-Determination and Education Assistance Act (88 Stat. 2203; Pub. L. 93-638; 25 U.S.C. 450 et seq.).

§ 31h.92 Training activities.

Training funds provided under this part may be used for training in the following subject areas:

(a) Educational philosophy;
(b) Community school programs;
(c) Legal aspects of being a school board member;
(d) School board operations and procedures;
(e) Fiscal management;
(f) Formula funding;
(g) Personnel matters;
(h) Union negotiations;
(i) Contracting procedures and obligations;
(j) Special curriculum areas;
(k) Students' rights and responsibilities;
(l) Education agency relations;
(m) Alternative sources of Federal grants;
(n) Juvenile justice;
(o) Teachers training and inservice options;
(p) Needs assessment, program development, proposal writing; and
(q) Other training activities school boards deem appropriate and applicable to their situation and which are approved by the Director.

§ 31h.93 Allowable expenditures.

Allowable expenditures under this subpart are limited to:

(a) Contracting with individuals and organizations for training services,
(b) Membership fees in school boards' associations and purchase of their materials and publications,
(c) Membership reimbursement for subsistence and travel expenses incurred while participating in training activities; and
(d) Cooperative contracts with other school boards for joint training or technical assistance activities.

§ 31h.94 Limitations on expenditures.

(a) No expenditure may be authorized except in accordance with a decision of record by the school board and each payment shall be made under written authorization of the board chairperson.

(b) Expenditures under this subpart may not be made for school board members' stipends or honorariums associated with participation in training activities. Payments for such may, however, come from the school's operational budget, if so designated and approved in the school's operational budget, if so designated and approved in the school's local educational finance plan. The maximum amounts of such payments shall be determined in

accordance with the laws or regulations of the tribe involved and shall be subject to approval by the Director. In the absence of such tribal laws or regulations, such maximums shall be determined by the Director in consultation with the school board. Payments under this subpart may not be made to any employee of a school served by the school board being trained or assisted.

§ 31h.95 Reporting of expenditures.

An accounting of all expenditures of school board training funds shall be maintained as a supplement to each school's public accounting records.

§ 31h.96 Provision for annual adjustment.

The allocation of $5,000 per school may be annually adjusted by the Director.

§ 31h.97 Training for agency school board.

Provisions for training agency school board members, except as they may also be members of local school boards, are not included in these local school board training funds. If required, such provision shall be incorporated in agency or area office educational administration training plans and budgets.

Subpart H—Student Transportation

§ 31h.100 Definitions.

As used in this subpart, the term:

(a) "Basic transportation miles" means the daily average of all bus miles logged for round trip home-to-school transportation of day students.

(b) "Transported student" means the average number of students transported to school on a daily basis.

(c) "School bus" means a passenger vehicle, operated by an operator in the employ of, or under contract to, a Bureau operated or funded school, who is qualified to operate such a vehicle under State or Federal regulations governing the transportation of students; which vehicle is used to transport day students to and/or from home and the school.

§ 31h.101 Purpose and scope.

The purpose of this section is to provide funds to each school for the round trip transportation of students between home and the school site.

§ 31h.102 Allocation of transportation funds.

Transportation funds for FY 1980 shall be allocated to each school as follows:

(a) *Day students.* Funds shall be allocated to each school which provides daily transportation of students between the student's residence and the school site by the following formula:

(1) 180 × ($.85 per basic transportation mile + $.61 per transported student).

(2) The allocation shall be based on the daily average of transported students and basic transportation miles computed during the October and November count periods.

(3) This formula shall not apply to any dormitory which provides daily transportation between dormitory and the public school which the dormitory student attends.

(b) *Boarding school and dormitory students.* Funds shall be allocated to each boarding school and dormitory for the transportation of resident students according to the following criteria:

(1) For each student whose home is more than 1 mile and no more than 100 miles from the boarding school or dormitory, the school shall receive $3.20 per mile per student per year. The miles per student shall be the shortest driving distance one way from the student's home to the school site. This provision applies only to those students for whom ground transportation is provided and for whom it is not necessary to provide air transportation.

(2) For each student whose home is more than 100 and no more than 350 miles from the boarding school or dormitory, the school shall receive $1.60 per mile per student per year. The miles per student shall be the shortest driving distance one way from the student's home to the school site. This provision applies only to those students for whom ground transportation

is provided and for whom it is not necessary to provide air transportation.

(3) For each student whose home is more than 350 miles from the boarding school or dormitory, the school shall receive $.48 per mile per student per year. The miles per student shall be the shortest driving distance one way from the student's home agency to the school site. This provision applies only to those students for whom ground transportation is provided and for whom it is not necessary to provide air transportation.

(4) For each student whose home is more than 350 miles from the boarding school or dormitory and for whom it is necessary to provide airplane transportation, the school shall receive $.60 per mile per student flown per year. The miles per student shall be the actual one way air miles between the airport closest to the school site and the closest to the student's home. Airplane transportation shall be provided only when ground transportation is unavailable or not cost-effective.

(5) For each student attending Mt. Edgecumbe Boarding School, Sitka, Alaska, who requires airplane transportation, the school shall receive $1.05 per mile per student flown per year. The miles per student shall be the one way air miles between the Sitka, Alaska airport and the airport nearest the student's home.

(6) At least 80% of the funds received by the school under 3, 4, and 5 above must be used for student travel between home and school.

§ 31h.103 Annual transportation formula adjustment.

The Director will review transportation allotment factors each year and make changes in factors based on changes in transportation costs.

Subpart I—Interim Maintenance and Minor Repair Fund

§ 31h.110 Establishment and funding of an Interim Maintenance and Minor Repair Fund.

There is established in the Division of Facilities Management a separate temporary fund entitled the Interim Maintenance and Minor Repair Fund. The Assistant Secretary shall cause the distribution of an amount of $1 million, under the FY 1980 Appropriation for the Bureau, from budget activity 3500, "General Management and Facilities Operation", to the direct use of schools, and shall create an appropriate account or subaccount for the Interim Maintenance and Minor Repair Fund and credit these funds thereto.

§ 31h.111 Conditions for distribution.

Funds from the Interim Maintenance and Minor Repair Fund shall be distributed to Bureau operated and funded schools and shall be separately earmarked in local school financial plans solely for expenditure at the discretion of the school supervisor for cost of school facility maintenance and minor repair. These funds shall be used to meet immediate minor repair and maintenance needs.

§ 31h.112 Allocation.

(a) Interim Maintenance and Minor Repair funds shall be allocated to all Bureau operated and contract schools based on the number of square feet of floor space used for that school's educational program, for student residence and for support facilities. Staff quarters shall be specifically excluded from the computation.

(b) Square footage figures used in determining school allocations shall be taken from the facilities inventory maintained by the Division of Facilities Engineering.

(c) In those cases, such as contract schools, where square footage figures are not now available, it shall be the responsibility of the Bureau's Division of Facilities Engineering to correct the information.

(d) Schools in Alaska shall receive a 25% cost adjustment increase in the computation of their allocation.

§ 31h.113 Use of funds.

Funds allocated under this provision for maintenance and minor repair shall be used for no other purpose.

§ 31h.114 Limitations.

Nothing in this provision shall be interpreted as relieving the Bureau

branch of Facilities Management or its field offices of any responsibility for continuing to provide maintenance and repair service to schools through existing procedures.

Subpart J—Interim Administrative Cost Formula

§ 31h.120 Purposes and scope.

The purpose of this subpart is to provide funds at the Office of Indian Education Programs and the area and agency education offices for FY 1980 for administration of all Bureau of Indian Affairs education functions, including school operations, continuing education, and Johnson O'Malley programs.

§ 31h.121 Definitions.

(a) "Area Education Office" means the office responsible for Bureau education programs and functions in a Bureau Area Office.

(b) "Area" means the Area Education Office and all agency education offices within the geographic area.

§ 31h.122 Accounting.

A separate education administrative cost account element will be established in the Bureau's education funds accounting system beginning in FY 1980.

§ 31h.123 Determination of present cost levels.

In previous years element 10 ("Education and Training-General,") funds have included special program contracts as well as direct administrative costs. To determine what portion of element 10 constituted actual direct administrative costs for each area in FY 1979, the Director, in consultation with the Area Director for Education of the Area where the contract is now held, will review each of these element 10 contracts for FY 1979 and determine the appropriate status of each according to the following criteria:

(a) All contracts for non-administrative services shall be deleted from the computation of current and future administrative cost figures.

(b) Contracts for services which will be funded elsewhere under the Indian School Equalization Program shall be terminated as of September 30, 1979.

(c) All such contracts which provide unique educational services which are not funded elsewhere under the Indian School Equalization Program are to be reviewed on a contract by contract basis and a determination made by the Director whether each shall be continued or terminated. Those contracts which are continued shall be placed under an appropriate non-administrative education cost account. Funds equal to the FY 1979 contract amount shall be transferred to this account from the FY 1980 element 10 appropriation.

§ 31h.124 Allotment of educational administrative funds.

The FY 1980 total budget for educational administration shall be allotted to the Director and to officials in the Area and Agency Education Offices designated by the Director. The total amount to be allotted shall be equal to the amount budgeted for element 10 in the FY 1980 budget appropriations request, less the amounts which were spent in FY 1979 for non-administrative contract programs and services (as determined in section 31h.123) and less any reduction due to appropriation of less than the requested amount of a reprogramming approved by the Congressional Appropriation Committees. This total shall be called the "total available for allotment" and shall be distributed to the various BIA educational administration offices as follows:

(a) The Office of the Indian Education Programs allotment shall be $4,353,400, which is equal to the FY 1979 element 10 budget. This amount shall be used to fund salaries and personal services, general office overhead, and management improvement projects. None of these funds shall be used to fund special projects. Any unused salary lapse occurring in the Office of Indian Education Programs as of August 1, 1980 shall be apportioned to the schools through the formula.

(b) Each area shall receive for both Area and Agency Education Office administration a share of the balance in the total available allotment, after

funds for the office of Indian Education Programs have been allotted, which shall be computed as follows:

(1) The Area's share for administration of Johnson O'Malley (JOM) and Higher Education and Adult Education programs shall be equal to 2% of the total of JOM and Higher Education and Adult Education funds for programs administered in and by the Area. This sum shall be computed and alloted to the Area from the total available for allotment prior to computation of any additional amounts for the Area.

(2) The funds remaining in the total available for allotment shall be allocated for the general administration of educational functions in all Area and Agency Education Offices to be apportioned as follows:

(i) Twenty percent of the remaining total available for allotment shall be apportioned on the basis of each area's percentage of Indian students in average daily membership in Bureau operated and funded schools in the area compared to the national total of such membership.

(ii) The remaining 80 percent shall be apportioned on the basis of number of Bureau operated or funded schools and institutions located within the area. These funds shall be apportioned across areas based on a weighting factor .6 times the number of schools tribally operated under contract or other conveyance and a weight of 1.0 times the number of schools which are Bureau operated.

(3) To meet the statutory requirements for a salary supplement for Alaskan educational staff, an add-on weight of .25 will be used as a factor in determining the amount for distribution within the Juneau area under § 31h.124b (1) and (2).

§ 31h.125 Allotment exceptions.

Notwithstanding the provisions above, no Area shall receive less than 85% of the amount allotted to that Area for education administration in element 10 in FY 1979, excluding the sum spent on non-administrative contracts in FY 1979.

§ 31h.126 Distribution of administrative funds within area.

Within each Area, funds allotted to that Area shall be distributed to the Area and Agency Education Offices as follows:

(a) No Area Education Office shall receive an amount in excess of 85% of the element 10 allotments which that office received in FY 1979 exclusive of non-administrative contracts, except with the consent of the Director.

(b) Remaining funds in the Area after allotment to the Area Education Office shall be allotted by the Director to agency education offices on the basis of financial plans approved by Agency School Boards, where such boards exist, and in those cases where no school boards exist approved by the Director.

(c) In cases where the Director must during the course of the fiscal year make administrative transfers of Area or Agency administrative positions for the purpose of implementing policy decisions on direct line authority, the budgeted amounts for salary and other direct costs associated with those positions shall be transferred with them.

(d) Within 120 days of the effective date of this Part, the Director shall establish procedures to provide for Agency and Area school board approval of Area and Agency financial plans, where such boards are established.

(e) In developing such procedures, he or she shall consult all affected tribal governments of each area or agency.

§ 31h.127 Exceptional education services at Area and Agency Offices.

An amount of $700,000 shall be distributed to the Areas based on the Area's proportion of the number of exceptional education students in average daily membership in all Bureau funded schools. These funds shall be used only for exceptional education services and program coordination.

§ 31h.128 Provision for administrative cost formula based on administrative functions.

The Director shall propose amendments to these regulations to provide

a formula system for distribution of administrative funds to Area and Agency Education Offices based on education functions to be performed at each location. This system of distribution shall be implemented for FY 1981, to reflect the education functions to be performed at each administrative level.

Subpart K—Pre-Kindergarten Programs

§ 31h.130 Interim fiscal year 1980 and fiscal year 1981 funding for pre-kindergarten programs previously funded by the Bureau.

Those schools having pre-kindergarten programs funded fully or in part from Bureau education funds in fiscal year 1979 shall be funded from Bureau education funds by the Director in fiscal year 1980 and fiscal year 1981 at their fiscal year 1979 Bureau education funding levels. The fiscal year 1979 pre-kindergarten Bureau funding amount for each Bureau funded school shall be deducted from the school's fiscal year 1979 Bureau Education Budget amount prior to application of the phase-in provision detailed in § 31h.19.

§ 31h.131 Addition of pre-kindergarten as a weight factor to the Indian School Equalization Formula in fiscal year 1982.

The Director, in consultation with the tribes and school boards, shall determine appropriate weight factors needed to include pre-kindergarten programs in the Indian School Equalization Formula in fiscal year 1982. Based on a needs assessment, to be completed by January 1, 1980, pre-kindergarten programs shall be included in the Bureau's education request for fiscal year 1982.

Subpart L—Contract School Operation and Maintenance Fund

§ 31h.140 Definitions.

Contract school operation and maintenance costs for fiscal year 1979 means the sum of costs for custodial salaries and fringe benefits, related supplies and equipment and equipment repair, insurance, and school operation utilities costs, where such costs are not paid by the Division of Facilities Management or other noneducation Bureau sources.

§ 31h.141 Establishment of an interim fiscal year 1980 operation and maintenance fund for contract schools.

There is established in the Division of Facilities Management a separate fund entitled the Contract School Operation and Maintenance Fund. The Secretary shall cause the distribution of an amount of $2.5 million, under the fiscal year 1980 appropriation for the Bureau, from budget activity 3500. "General Management and Facilities Operations", to the schools through this fund and shall create an appropriate account or subaccount for the Contract School Operation and Maintenance Fund.

§ 31h.142 Distribution of funds.

(a) Each contract school shall receive in fiscal year 1980 a portion of the Contract School Operation and Maintenance Fund determined by the percentage share which that school's fiscal year 1979 operation and maintenance cost represents in the total fiscal year 1979 operation and maintenance cost for all such schools.

(b) To be eligible for these funds, a contract school shall submit a detailed report of actual operation and maintenance costs for fiscal year 1979 to the Director by November 23, 1979. These cost figures will be subject to verification by the Director to assure their accuracy prior to the allotment of any funds under this subpart.

(c) Any funds generated under this subpart shall be included in the computation of the phase-in amount as set forth in § 31h.19 if supplemental operation and maintenance funds were included in a school's fiscal year 1979 3100 contract funds.

§ 31h.143 Future consideration of contract school operation and maintenance funding.

The Assistant Secretary shall arrange for full funding for operation and maintenance of contract schools by fiscal year 1981.

PART 32—ADMINISTRATION OF EDUCATIONAL LOANS, GRANTS AND OTHER ASSISTANCE FOR HIGHER EDUCATION

Sec.
32.1 Appropriations for loans or grants.
32.2 Working scholarships.
32.3 Applications.
32.4 Security.
32.5 Repayments.

AUTHORITY: Sec. 11, 48 Stat. 986; 25 U.S.C. 471.

SOURCE: 22 FR 10533, Dec. 24, 1957, unless otherwise noted.

§ 32.1 Appropriations for loans or grants.

Funds appropriated by Congress for the education of Indians may be used for making educational loans and grants to aid students of one-fourth or more degree of Indian blood attending accredited institutions of higher education or other accredited schools offering vocational and technical training who reside within the exterior boundaries of Indian reservations under the jurisdiction of the Bureau of Indian Affairs or on trust or restricted lands under the jurisdiction of the Bureau of Indian Affairs. Such educational loans and grants may be made also to students of one-fourth or more degree of Indian blood who reside near the reservation when a denial of such loans or grants would have a direct effect upon Bureau programs within the reservation. After students meeting these eligibility requirements are taken care of, Indian students who do not meet the residency requirements but are otherwise eligible may be considered.

[33 FR 9708, July 4, 1968]

§ 32.2 Working scholarships.

Working scholarships may be granted to Indians who wish to earn their board and room by part-time work at Federal boarding schools that are located near a college, trade, or vocational school.

§ 32.3 Applications.

Applications for educational loans, grants, and working scholarships shall be submitted through the superintendent or officer in charge of the agency at which the applicant is enrolled in the manner prescribed by the Commissioner.

§ 32.4 Security.

If a borrower or cosigner has security to offer for an educational loan it must be given in an amount adequate to protect the loan.

§ 32.5 Repayments.

Repayment schedules for educational loans may provide not to exceed two years for repayment for each year in school.

PART 32b—GRANTS TO TRIBALLY CONTROLLED COMMUNITY COLLEGES AND NAVAJO COMMUNITY COLLEGE

Subpart A—Tribally Controlled Community Colleges

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32b.2 Scope.
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AUTHORITY: Sections 114 and 203(a) of Public Law 95-471, 25 U.S.C. 1815, 25 U.S.C. 640c-1(c).

SOURCE: 44 FR 67042, Nov. 21, 1979, unless otherwise noted.

Subpart A—Tribally Controlled Community Colleges

§ 32b.1 Purpose.

The policy of the Department of the Interior is to support and encourage

the establishment, operation, and improvement of tribally controlled community colleges to ensure continued and expanded educational opportunities for Indian students. The regulations in this Subpart prescribe procedures for providing financial and technical assistance to this end under the Tribally Controlled Community College Assistance Act of 1978 (Pub. L. 95-471, 92 Stat. 1325, 25 U.S.C. 1801 et seq.).

§ 32b.2 Scope.

The regulations in this subpart are applicable to the provision of financial and technical assistance to Community Colleges under Title I of the Act. They do not apply to the provision of assistance to Navajo Community College. Subpart B of this Part applies to assistance to Navajo Community College under Title II of the Act.

§ 32b.3 Definitions.

As used in this Subpart A:

(a) "Academic Term" means a semester, trimester, or other such period (not less than six (6) weeks in duration) into which a community college normally subdivides its academic year, but does not include a summer term.

(b) "Academic Year" means a twelve month period established by a community college and approved by the Director of Education as the annual period for the operation of the college's education programs.

(c) "The Act" means the Tribally Controlled Community College Assistance Act of 1978 (Pub. L. 95-471, 92 Stat. 1325, 25 U.S.C. 1801 et seq.).

(d) "Assistant Secretary" means the Assistant Secretary for Indian Affairs of the Department of the Interior, or his/her duly authorized representative.

(e) "Community College" means an institution of higher education which (1) is formally controlled or operated and managed by the governing body of an Indian Tribe or by the governing bodies of two or more Indian Tribes, or (2) is established or is otherwise sanctioned or chartered by resolution, ordinance, or other official action (which is still in full force and effect) of such governing body or bodies. However, for purposes of this definition, only one such institution shall be recognized with respect to any one Tribe. A Community College that meets the requirements of this definition with respect to more than one Tribe must meet such requirements with respect to at least one Tribe that has no other currently formally controlled, operated and managed, established, sanctioned, or chartered Community College.

(f) "Director of Education" means the Director of the Office of Indian Education Programs of the Bureau of Indian Affairs, or his/her duly authorized representative.

(g) "Full Time Equivalent" or "FTE", means the number of Indian students (1) enrolled full-time for an entire academic term at a community college, calculated on the basis of registrations as in effect at the conclusion of the sixth week of an academic term, plus (2) the full-time equivalent of the number of other Indian students who are enrolled part-time for an entire academic term at a community college (determined on the basis of the quotient of the sum of credit hours for which all such part-time students are registered during such academic term, divided by twelve (12)), calculated on the basis of registrations as in effect at the conclusion of the sixth week of an academic term. The formula for calculating the Indian FTE for an academic term is expressed mathematically as FTE=FT+PTCR/12 where FT is the number of full time Indian students (those carrying 12 or more credit hours at the end of the sixth week of the academic term) and PTCR is the number of credit hours for which part-time Indian students are registered at the end of the sixth week of an academic term.

(h) "Indian" means a person who is a member of an Indian Tribe and is eligible to receive services from the Secretary of the Interior because of his/her status as an Indian.

(i) "Indian Tribe" means an Indian tribe, band, nation, pueblo, rancheria, or other organized group or community, including any Alaskan Native Village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act, which is recognized as eligible for the

special programs and services provided by the United States to Indians because of their status as Indians.

(j) "Institution of Higher Education" as defined in Pub. L. 95-471 (incorporating in part § 1201 of the Higher Education Act of 1965), means an educational institution in any State which (1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, (2) provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree, (3) is a public or other nonprofit institution, and (4) is accredited by a nationally recognized accrediting agency or association or, if not so accredited, (A) is an institution with respect to which the Commissioner of Education has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time, or (B) is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited. Such term also includes any school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions of clauses (1), (2), (3), and (4). Such term also includes a public or nonprofit private educational institution in any State which, in lieu of the requirement in clause (1), admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution.

(k) "National Indian Organization" means any organization of Indians, found by the Director of Education to be nationally based, representing a substantial Indian constituency, and expert in the field of Indian education. Notice of such findings shall be published in the Federal Register with an opportunity for comment from the public and no such finding shall be effective earlier than 30 days after publication.

(l) "Operating Expenses of Education Programs" means the obligations and expenditures of a community college for post-secondary activities, including administration, instruction, attendance, health and other student services, operation, maintenance and repair of plant, fixed charges, and other related expenses, but not including expenditures for the acquisition or construction of academic facilities. (The term "academic facilities" means structures suitable for use as classrooms, laboratories, libraries, and related facilities necessary or appropriate for instruction of students, or for research, or for administration of the educational or research programs of an institution of higher education or as dormitories or student services buildings, and maintenance, storage, support, or utility facilities essential to operation of the foregoing facilities.)

(m) "Part-time" means registered for less than twelve (12) credit hours for an academic term; "full-time" means registered for twelve (12) or more credit hours for an academic term.

(n) "Unused Portion of Received Funds" means the amount of financial assistance provided under this Subpart to a Community College for an academic year which has not been obligated or expended by the Community College by July 1 of that academic year.

§ 32b.4 Eligible recipients.

Financial assistance under this Subpart shall be available only to a Community College which:

(a) Is governed by a board of directors, regents, or trustees, a majority of whom are Indians;

(b) Demonstrates its adherence to stated goals, a philosophy, or a plan of operation which is directed to meet the needs of Indians, and has formally adopted, in writing, such goals, philosophy, or plan of operation, which may

be in the form of a constitution, bylaws, or policy statement of the Community College;

(c) If in operation for more than one year, has students a majority of whom are Indian; and

(d) Upon completion of a feasibility study, receives a positive determination, and;

(e) Is not in violation of § 32b.11 of this Subpart.

§ 32b.5 Eligible activities.

Financial assistance under this Subpart shall be available to defray only the operating expenses of education programs of Community Colleges. Financial assistance under this Subpart shall not be used for religious worship or sectarian instruction, but nothing in this Subpart shall be construed as barring instruction in comparative religions or cultures or in languages of Indian tribes.

§ 32b.6 HEW participation.

The Assistant Secretary for Indian Affairs is authorized to enter into an agreement with the Assistant Secretary for Education, Department of Health, Education, and Welfare, and to revise such agreement as necessary, to assist the Director of Education in the development of plans, procedures, and criteria for feasibility studies under this Subpart, and to provide the Director with technical assistance in conducting such feasibility studies, including determinations as to the reasonable number of students required to support a Community College.

§ 32b.7 Feasibility studies.

(a) Grants under § 32b.8 of this Subpart may be made to a Community College only after a positive determination of feasibility as provided in this section.

(b) Within thirty (30) days of receiving a resolution or other duly authorized request from the governing body of one or more Indian Tribes, the Director of Education shall initiate a feasibility study to determine whether there is justification to encourage and maintain a Community College for such tribe or tribes. The feasibility study shall give consideration to the following factors:

(1) Financial feasibility based upon potential enrollment;

(2) Evidence of low tribal levels of tribal matriculation in and graduation from postsecondary educational institutions;

(3) Tribal, linguistics, or cultural differences;

(4) Isolation;

(5) Presence of alternate education sources;

(6) Proposed curriculum;

(7) The benefits of continued and expanded educational opportunities for Indian students.

(c) The Director of Education will issue detailed guidelines for conducting and analyzing the feasibility studies.

(d) Feasibility studies under this section shall be conducted in consultation with the tribal governing body or bodies involved or their designated representatives. Each feasibility study shall be completed and filed by the Director of Education within sixty (60) days after the feasibility study has been initiated. The study shall be filed with (1) the Assistant Secretary, (2) the tribal governing body or bodies requesting the studies, and (3) with the board of directors, regents, or trustees of the Community College, if already established.

(e) In the case of any feasibility study which results in a negative determination by the Director of Education, a Tribe requesting the study may within thirty (30) days of receipt of the study or of notice of such determination file a notice of appeal with the Assistant Secretary. Following the timely filing of a Tribe's notice of appeal, the Tribe and Community College shall have a right to a formal review of the feasibility study, including a hearing upon reasonable notice within sixty (60) days before the Assistant Secretary (or his/her designee, other than the Director of Education or any federal employee under the Director's supervision). At the hearing, the appealing Tribe or the Community College (or both) may present additional evidence or arguments to justify feasibility. Within thirty (30) days of the hearing, the Assistant Secretary shall issue a written ruling either confirming, modifying, or reversing the

original determination. The ruling, which shall be final for the Department, shall be mailed or otherwise delivered to the appealing Tribe and the Community College within one week of its issuance.

In any case where the original negative determination is not reversed, the Assistant Secretary's ruling shall specify the grounds for the decision and state the manner in which the determination related to each of the factors specified.

(f) A negative determination shall not prevent a Tribe from requesting another feasibility study, but no more than one feasibility study shall be requested for any given Community College per year.

§ 32b.8 Grants.

(a) Each Community College which has received a positive feasibility study determination under § 32b.7 of this Subpart shall be entitled to apply for financial assistance under this Subpart.

(b) Except with respect to applications for grants for the 1979–1980 academic year, each Community College shall make an application to the Director of Education before January 31, of the year preceding the academic year for which financial assistance is requested. Each application must contain the following information:

(1) The name and address of the Community College and the names of the members of the governing board and the number of its members who are Indian;

(2) A statement that the Community College has received a positive feasibility determination and the date thereof;

(3) A written statement of the goals, philosophy, or proposed plan of operation sufficient to demonstrate that its education program or proposed program is designed to meet the needs of Indians;

(4) In the case of a Community College which has been in operation for more than one year, a statement of the total number of FTE Indian students and the total number of all FTE students;

(5) If the Community College has not yet begun operations, a statement of expected enrollment, including the total number of FTE students and the number of FTE Indian students;

(6) The name and address of the Indian Tribe or Tribes which control or operate and manage, or have established, sanctioned, or chartered the Community College, and a statement as to which of those Tribes have not done so with respect to any other Community College;

(7) A curriculum, which may be in the form of a college catalog or like publication;

(8) A proposed budget, showing total expected operating expenses of education programs and expected revenues from all sources for the academic year to which the information applies;

(9) An assurance that the Community College will not deny admission to any Indian student because that student is not a member of a specific tribe or because such student is a member of a specific tribe, and will comply with the requirements set forth in § 32b.11 of this Subpart together with any request and justification for a specific waiver of any requirement of 25 CFR Part 276 which the Community College believes to be inappropriate;

(10) Certification by the chief executive officer of the Community College that the information on the application is complete and correct and that the application has been filed with the governing body or bodies of the Tribe or Tribes which control or have sanctioned or chartered it.

(c) (1) Within thirty (30) days of receiving an application required under subsection (b) of this section, the Director of Education shall review the application submitted by the Community College and any comments with respect thereto filed by the Tribe(s) or by any national Indian organization(s) whose assistance has been requested by the Community College, and make a grant award in an amount determined under subsection (d) of this section to the Community College if the application qualifies the Community College to receive a grant.

(2) In the case of any Community College whose application is not approved, the Director shall promptly send a notice of such action to the Community College. Such notice shall

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include a statement of the specific reasons for not approving the application and a statement advising the College of its right within thirty (30) days to amend or supplement the application on file to rectify the defect.

(3) Final disapproval of a grant application by the Director after the thirty day period referred to in subsection (c)(2), or a failure of the Director of Education to approve an application within thirty (30) days of its receipt may be appealed by a Community College in the same manner as provided in subsections (d) and (f) of § 32b.7.

(4) A Grant award under an approved application shall be evidenced by a grant agreement, signed by the Director of Education, incorporating the application and the provisions required by § 32b.11.

(d) (1) In fiscal year 1980, each Community College which qualifies for a grant will receive a grant for academic year 1979-80; thereafter each Community College which qualifies for a grant shall receive a grant for the academic year commencing after the date of approval of its application. Except as provided in subsection (d)(3) grants shall be in an amount equal to $4,000 multiplied by the number of FTE Indian students in attendance at such college during each academic term divided by the number of academic terms in the academic year, except that no such grant shall exceed the annual operating expenses of the education programs provided by the Community College. The mathematical formula for calculating the base grant is BG (Base Grant)=

$$\$4000 \times \frac{FTE_{TERM\ 1} + FTE_{TERM\ 2} + \ldots + FTE_{TERM\ N}}{N}$$

where FTE is the Indian FTE for each of the academic terms during the academic year calculated in conformity with § 32b.3(g) of this Subpart and N is the number of academic terms in the academic year.

(2) For the first Federal fiscal year for which funds are appropriated for grants under this Subpart, not less than eight (8) nor more than fifteen (15) grants shall be approved; priority in awarding such grants shall be given to Community Colleges which are operating on October 17, 1978, and which have a history of service to the Indian people. (If more than fifteen (15) Community Colleges meeting these two (2) conditions submit applications for the first fiscal year, a further priority for awarding grants among them shall be given to those who appear to be in the best position to fulfill the purpose of the Act and to those whose continued existence would be threatened if they did not receive such a grant).

(3) All grants under this section shall be subject to the availability of appropriations and the amount thereof shall be ratably reduced for all Community Colleges if the sums appropriated for any fiscal year for financial assistance under this Subpart are not sufficient to pay the full amounts to which the eligible Community Colleges are otherwise entitled under subsection (d)(1).

(e) The Director of Education shall authorize payments to each such Community College in advance installments by letter of credit or Treasury check in an amount equal to fifty percent (50%) of the grant amount available for allotment to such Community College for such academic year under subsection (d) of this section on or before October 1st of such College's academic year (except for 1979-80) or the first day on which appropriations for the fiscal year beginning on such date are available for obligation by BIA whichever occurs later, based on the number of FTE Indian students calculated on the basis of registrations as in effect at the conclusion of the sixth week of the final academic term of the preceding academic year. On or before January 1st (or such other date that is the first day of the fifth month) of such College's academic year, payments shall be made in the form of advance installments to each Community College in an amount equal to seventy-five percent (75%) of the grant amount available for allotment to such Community College for such academic year under subsection (d) of this section, calculated on the basis of registrations at the conclusion of sixth week of the academic year, less the amount previously advanced

for such academic year. On or before July 1st (or such other date that is the first day of the eleventh month) of each such academic year the balance of the grant amount to which each College is entitled under subsection (d) of this section shall be paid to such College. In the event that additional sums are appropriated to which such Community Colleges are entitled under section 110(a) of the Act and subsection (d) of this section, these amounts shall be included in such final payments.

(f) If with respect to any academic year the amounts of financial assistance hereunder have been ratably reduced as provided in subsection (d)(3) of this section and additional funds have not been appropriated to pay the full amount of such reductions on or before June 1st of such year, the Director of Education shall notify each Community College of such fact in writing, and each Community College shall report in writing to the Director of Education on or before July 1st of such year the amount of unused portion of received funds. The total of such reported unused portions of received funds shall be reallocated by the Director of Education in proportion to the amount of financial assistance to which each Community College is entitled under subsection (d) but which has not been provided due to the ratable reductions provided for therein, (except that no Community College shall receive more than the total annual cost of the education programs provided by such College) and payments shall be made reflecting such reallocations on or before August 1st of such academic year.

(g) If the Director of Education determines that a Community College has received, through mistake or fraud, payments of financial assistance under this Subpart to which it was not entitled, the Director shall promptly notify the college, which may appeal the Director's determination under the procedures set forth in § 32b.7, and adjust the amount of payments to the college under this Subpart for the same or subsequent academic years to compensate for such overpayments or otherwise attempt to recover such overpayments.

(h) Eligibility for grants under this Subpart shall not, by itself, bar a Community College from qualifying for or receiving financial assistance under any other Federal program for which it may qualify.

§ 32b.9 Reports.

Each Community College receiving financial assistance under this Subpart shall provide to the Director of Education on or before December 1st of each year a report which shall include an accounting of the amounts and purposes for which such financial assistance was expended during the preceding academic year; the annual cost of education programs of the Community College from all sources for such academic year; and a final report of the performance based upon the criteria set forth in the Community College's stated goals, philosophy or plan of operation. Upon reasonable cause, the Director of Education may extend the period for submitting the annual report. Each Community College shall in addition report to the Director of Education its FTE Indian student enrollment for each academic term of the academic year within three weeks of the date such FTE calculation is made.

§ 32b.10 Technical assistance.

The Director of Education shall furnish technical assistance either directly or through contract to any Community College requesting it. Such assistance shall be initiated within thirty (30) days of a Community College's request in writing. In any case, where the type and source of technical assistance is specified in the request, the Director, to the extent possible or feasible, shall provide the type of technical assistance through the source so specified. Technical assistance may include, but is not limited to, consulting services for the development of programs, plans, and feasibility studies and accounting, and other technical advice. In awarding of contracts for technical assistance, preference shall be given to an organization designated by the Community College to be assisted.

Denials of requests for technical assistance under this section shall be made in writing and sent to the appli-

cant within thirty (30) days of the request, together with a statement of the reason for denial. An appeal under this section may be undertaken in the same manner as in the case of negative determinations of feasibility under § 32b.7 of his Subpart.

§ 32b.11 General provisions.

The general requirements for grant administration in this section are applicable to all grants provided under this Subpart to Community Colleges:

(a) Services or assistance provided to Indians by Community Colleges aided under this Subpart shall be provided in a fair and uniform manner, and admission to any such Community College shall not be denied to any Indian student because such individual is not a member of a specific Indian tribe or because such individual is a member of a specific Indian tribe.

(b) Except as may be otherwise provided in this Subpart, any Community College receiving financial assistance under this Subpart shall comply with Part 276 of this Title, subject to any express waiver of specific inappropriate provisions of Part 276 that may be granted by the Assistant Secretary after request and justification by the Community College.

(c) A Community College shall have the right to appeal any adverse decision of the Director of Education under a grant agreement to the Assistant Secretary by filing written notice of appeal with the Assistant Secretary within thirty (30) days after the adverse decision. Within thirty (30) days after receiving notice of appeal, the Assistant Secretary shall conduct a formal hearing at which time the College may present evidence and argument to support its appeal. Within thirty (30) days of the hearing, the Assistant Secretary shall issue a written ruling on the appeal confirming, modifying, or reversing the Director of Education's decision, the Assistant Secretary shall state in detail the basis for his/her ruling. The ruling of the Assistant Secretary on an appeal shall be final for the Department of the Interior.

§ 32b.12 Annual budget.

Appropriations under Title I of the Tribally Controlled Community College Assistance Act of 1978 shall be separately identified in the Bureau of Indian Affairs Budget Justification. Funds appropriated for grants under this Subpart shall not be commingled with other funds expended by the Bureau of Indian Affairs.

§ 32b.13 Criminal penalties.

Persons submitting or causing to be submitted to the Bureau any false information in connection with any application, report, or other document, upon which the provision of Federal financial assistance or any other payment of Federal funds is based, may be subject to criminal prosecution under provisions such as sections 287, 371, or 1001 of Title 18, U.S. Code.

Subpart B—Navajo Community College

§ 32b.20 Policy.

It is the policy of this Department to support and encourage the establishment, operation, and improvement of tribally controlled community colleges in order to ensure continued and expanded educational opportunities for Indian students. The regulations in this Subpart prescribe procedures for providing financial and technical assistance to this end for the Navajo Community College under the Navajo Community College Act, as amended (25 U.S.C. 640a-c).

§ 32b.21 Scope.

The regulations in this Subpart are applicable to the provision of financial and technical assistance to Navajo Community College pursuant to the Navajo Community College Act of December 15, 1971 (Pub. L. 92-189, 85 Stat. 646, 25 U.S.C. 640a-c) as amended by the Navajo Community College Assistance Act of 1978, Title II of the Tribally Controlled Community College Assistance Act of 1978 (Pub. L. 95-471, 92 Stat. 1325, 1329, 25 U.S.C. § 640c). Regulations applicable to Tribally Controlled Community Colleges other than Navajo Community College

are found in Subpart A of this Part 32b.

§ 32b.22 Definitions.

As used in this Subpart:

(a) "Academic Term" means a semester, trimester, or other such period (not less than six (6) weeks in duration) into which the college normally subdivides its academic year, but does not include a summer term.

(b) "Academic Year" means a twelve month period established by the college and approved by the Director of Education as the annual period for the operation of the college's education programs.

(c) "The Act" means the Navajo Community College Act of December 15, 1971 (Pub. L. 92-189, 85 Stat. 646) as amended by the Navajo Community College Assistance Act of 1978, (Pub. L. 95-471, Title II, 92 Stat. 1329, 25 U.S.C. § 640a et seq.).

(d) "Assistant Secretary" means the Assistant Secretary for Indian Affairs of the Department of the Interior or his/her duly authorized representative.

(e) "College" means the institution known as Navajo Community College established by the Navajo Tribe.

(f) "Director of Education" means the Director of the Office of Indian Education Programs of the Bureau of Indian Affairs, or his/her duly authorized representative.

(g) "Full Time Equivalent" or "FTE" means the number of Indian students (1) enrolled full-time for an entire academic term at the College, calculated on the basis of registrations as in effect at the conclusion of the sixth week of an academic term, plus (2) the full-time equivalent of the number of other Indian students who are enrolled part-time for an entire academic term at the College (determined on the basis of the quotient of the sum of credit hours for which all such part-time students are registered during such academic term divided by (12)), calculated on the basis of registrations as in effect at the conclusion of the sixth week of an academic term. The formula for calculating the Indian FTE for an academic term is expressed mathematically as FTE = FT + PTCR/12 where FT is the number of full time Indian students (those carrying 12 or more credit hours at the end of the sixth week of the academic term) and PTCR is the number of credit hours for which part-time Indian students are registered at the end of the sixth week of an academic term.

(h) "Indian" means a person who is a member of an Indian tribe and is eligible to receive services from the Secretary of the Interior because of his/her status as an Indian.

(i) "Indian Tribe" means an Indian tribe, band, nation, pueblo, rancheria, or other organized group or community, including any Alaskan Native Village or Regional or Village Corporation as defined in or established under the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(j) "Operating and Maintenance Expenses of Education Programs" means the obligation and expenditures by the College for post-secondary education activities including administration, instruction, attendance, health and other student services, operation, maintenance and repair of plant, and fixed charges, and other related expenses, but not including obligations or expenditures for the acquisition or construction of academic facilities (as defined in § 32b.3(1) of Subpart A).

§ 32b.23 Eligible activities.

Financial assistance under this Subpart shall be available to defray only the operating and maintenance expenses of education programs of the College. Financial assistance under this Subpart shall not be used for religious worship or sectarian instruction, but nothing in this Subpart shall be construed as barring instruction in comparative religions or cultures or in languages of Indian tribes.

§ 32b.24 Grants.

(a) Navajo Community College is entitled to annual grants for operation and maintenance of the College in amounts based upon the number of Full-Time Equivalent Indian students in attendance.

(b) Annually, in the manner and within the deadline established by the

Director of Education, the Navajo Community College shall submit an application in the form of a statement of its FTE enrollment (total and Indian) for the next academic year. The statement shall include a description of the College's curriculum, which may be in the form of a College catalog or like publication, and a proposed budget showing total expected operating expenses of educational programs and expected revenue from all sources for the academic year for which the information applies. The statement shall be certified by the chief executive officer of the College and shall certify that a copy of that statement has been submitted to the Navajo Tribe.

(c) Annual budget request for the College shall be sparately identified in the Bureau of Indian Affairs Budget Justifications. Funds appropriated for grants under this subpart shall not be commingled with other funds appropriations historically expended by the Bureau of Indian Affairs for programs and projects normally provided on the Navajo Reservation for Navajo beneficiaries.

(d) Within thirty (30) days of submission of the statement required under subsection (b) of this section, the Director of Education shall make a grant award to the College in an amount determined under subsection (e) of this section. The grant award shall be evidenced by a grant agreement signed by the Director of Education, incorporating the grant application and including the provisions required by § 32b.27 of this Subpart.

(e) The College shall be eligible to receive a grant for the fiscal year beginning October 1, 1979, and for each succeeding year, in an amount equal to $4,000 multiplied by the number of FTE Indian students in attendance at the College during each academic term divided by the number of academic terms in the academic year, except that no such grant shall exceed the annual operating expenses of the education programs provided by the College. The mathematical formula for calculating the base grant is BG (Base Grant)=

$$\$4000 \times \frac{FTE_{TERM\ 1} + FTE_{TERM\ 2} + \ldots + FTE_{TERM\ N}}{N}$$

where FTE is the Indian FTE for each of the academic terms during the academic year calculated in conformity with section 32b.22(g) of this Subpart and N is the number of academic terms in the academic year. The amount and payment of such grants shall be subject to the availability of annual appropriations.

(f) The Director of Education shall authorize payments to the College in advance installments by letter of credit or Treasury check in an amount equal to fifty percent (50%) of the grant amount available for allotment to the College for such academic year under subsection (e) of this section on or before October 1st of such academic year (except 1979-80) or the first day on which appropriations for the fiscal year beginning on such date are available for obligation by BIA, whichever occurs later, based on the number of FTE Indian students calculated on the basis of registrations as in effect at the conclusion of the sixth week of the final academic term of the preceding year. On or before January 1st (or such other date that is the first day of the fifth month) of such academic year, payment shall be made in the form of such advance installments to the College in an amount equal to seventy-five percent (75%) of the grant amount available for allotment to the College for such academic year under subsection (e) of this section, calculated on the basis of registrations as in effect at the conclusion of the sixth week of the academic year, less the amount previously advanced for such academic year. On or before July 1st (or such other date that is the first day of the eleventh month) of such academic year, the balance of the grant amount to which the College is entitled under subsection (e) of this section shall be paid to the College. In the event that additional sums are appropriated for the benefit of the College, these sums shall be included in the final payment.

(g) Overpayments of grants under this Subpart may be recovered in the manner provided by § 32b.8(g) of Subpart A.

(h) Payments to the Navajo Community College under this Subpart shall not disqualify the College from applying for or receiving grants or contracts under any other Federal programs for which it may qualify.

§ 32b.25 Reports.

The Navajo Community College shall provide the Director of Education on or before September 1st of each year a report which shall include an accounting of the amounts and purposes for which financial assistance under this Subpart was expended during the preceding academic year, the annual cost of the education programs of the College from all sources for such academic year, and a final report of the performance based upon the criteria set forth in the College's stated goals, philosophy or plan of operation. Upon reasonable cause, the Director of Education may extend the period for submitting the annual report. The college shall in addition report to the Director of Education its FTE Indian Student enrollment for each academic term of the academic year within three weeks of the date such FTE calculation is made.

§ 32b.26 Technical assistance.

The Director of Education shall furnish technical assistance, either directly or through contract, to the College when requested in writing. Such assistance shall be initiated within thirty (30) days of the College's request. In any case in which the form and source of technical assistance is specified in the request, the Director of Education shall to the extent possible or feasible provide technical assistance in the form requested and through the source so specified. Technical assistance may include, but is not limited to, consulting services in the development of annual statements and reports required under this Subpart and accounting, and other technical advice and assistance.

§ 32b.27 General provisions.

The general requirements for grant administration in this section are applicable to all grants provided under this Subpart to the Navajo Community College.

(a) Services or assistance provided to Indians by the College with the financial assistance provided under this Subpart shall be provided in a fair and uniform manner, and admission to the College shall not be denied any Indian student because such individual is not a member of a specific Indian tribe or because such individual is a member of a specific Indian tribe.

(b) Except as may be otherwise provided in this Subpart, the College shall comply with Part 276 of this Title, subject to express waiver of specific inappropriate provisions of Part 276 that may be granted, after request and justification by the College by the Assistant Secretary.

(c) In addition to any other right the college may have under this Subpart, the College shall have the right to appeal any adverse decision of the Director of Education under a grant agreement to the Assistant Secretary by filing written notice of appeal with the Assistant Secretary within thirty (30) days of the adverse decision. Within thirty (30) days after receiving notice of appeal, the Assistant Secretary shall conduct a formal hearing at which time the College may present evidence and argument to support its appeal. Within thirty (30) days of the hearing, the Assistant Secretary shall issue a written ruling on the appeal confirming, modifying or reversing the decision of the Director of Education. In the case of a ruling not reversing the Director of Education's decision, the Assistant Secretary shall state in detail the basis for his/her ruling. The ruling of the Assistant Secretary on an appeal shall be final for the Department of the Interior.

§ 32b.28 Criminal penalties.

Persons submitting or causing to be submitted to the Bureau any false information in connection with any application, report, or other document, upon which the provision of the Federal financial assistance, or any other payment of Federal funds, is based, may be subject to criminal prosecution under provisions such as sections 287, 371, or 1001 of Title 18, U.S. Code.

PART 34—ADMINISTRATION OF A PROGRAM OF VOCATIONAL TRAINING FOR ADULT INDIANS

Sec.

34.1 Scope of the vocational training program.
34.2 Filing application.
34.3 Selection of applicants.
34.4 Satisfactory progress during training.
34.5 Approval of courses for vocational training at institutions.
34.6 Approval of apprenticeship training.
34.7 Approval of on-the-job training.
34.8 Financial assistance for trainees.
34.9 Contracts and agreements.
34.10 Waiver or exception.

AUTHORITY: Sec. 1, 70 Stat. 986; 25 U.S.C. 309.

SOURCE: 22 FR 10534, Dec. 24, 1957, unless otherwise noted.

§ 34.1 Scope of the vocational training program.

The vocational training program provides for vocational counseling or guidance, institutional training in any vocational or trade school, as provided in § 34.5, apprenticeship and on-the-job training, for a period not exceeding twenty-four months, and for nurses' training, for periods that do not exceed thirty-six months.

[29 FR 5828, May 2, 1964]

§ 34.2 Filing application.

Applications for adult vocational training services may be filed at agency or similar field offices of the Bureau of Indian Affairs on and after July 1, 1957.

§ 34.3 Selection of applicants.

The Vocational Training Program is available primarily to adult Indians of one-fourth or more degree of Indian blood who are not less than 18 and not more than 35 years of age and who reside within the exterior boundaries of Indian reservations under the jurisdiction of the Bureau of Indian Affairs or on trust or restricted lands under the jurisdiction of the Bureau of Indian Affairs. The Program is also available to additional Indians who reside near reservations in the discretion of the Secretary of the Interior when the failure to provide the services would have a direct effect upon Bureau programs within the reservation boundaries. An application for training services may be approved, within the limitation of available funds, when it is determined that the applicant is in need of such training in order to obtain reasonable and satisfactory employment, and that it is feasible for him to pursue such training. Reasonable and satisfactory employment is employment that provides:

(a) Sufficient income for the individual or family unit to live at an economic level considered as adequate in the community; and

(b) Opportunity for advancement on the basis of skill and experience acquired in the course of employment.

[27 FR 510, Jan. 18, 1962]

§ 34.4 Satisfactory progress during training.

An applicant who enters training pursuant to the provisions of this part, is required to make satisfactory progress in his course of training and to conform to a reasonable standard of conduct. Failure to meet these requirements due to reasons within his control may result in termination of training or loss of further training benefits.

§ 34.5 Approval of courses for vocational training at institutions.

A course of vocational training at any institution, public or private, offering vocational training, or with any school of nursing offering a 3-year course of study leading to a diploma in nursing which is accredited by a recognized body or bodies approved for such purpose by the Secretary, may be approved; *Provided,*

(a) The institution is accredited by a recognized national or regional accrediting association; or

(b) The institution is approved for training by a State agency authorized to make such approvals; and,

(c) It is determined that there is reasonable certainty of employment for graduates of the institution in their respective fields of training.

[34 FR 17520, Oct. 30, 1969]

§ 34.6 Approval of apprenticeship training.

A program of apprenticeship training may be approved when such training:

(a) Is offered by a corporation or association which has furnished such training to bona fide apprentices for at least one year preceding participation in this program; and

(b) Is under the supervision of a State apprenticeship agency, a State Apprenticeship Council, or the Federal Apprenticeship Training Service; and

(c) Leads to an occupation which requires the use of skills that normally are learned through training on the job and employment in which occupation is based upon training on the job rather than upon such elements as length of service, normal turnover, personality, and other personal characteristics; and

(d) Is identified expressly as apprenticeship training by the establishment offering it.

§ 34.7 Approval of on-the-job training.

On-the-job training may be approved when such training is offered by a corporation or association which has an existing on-the-job training program which is recognized by industry and labor as leading to skilled employment.

§ 34.8 Financial assistance for trainees.

Individuals or family units where the head of the family is entering training under this part may be granted financial assistance to provide for transportation to the place of training, and subsistence during the course of training. For purposes of this part, subsistence may be construed to provide for all or any part of the following items: Medical examinations; subsistence en route; subsistence during the course of training until the first full pay check from employment has been received; personal appearance; housewares; furniture; health care; payment for required books; supplies and tools for training; and payment of tuition and related cost and other required expenses, in accordance with the schedule and amounts as established by the Secretary or his authorized representative.

[27 FR 1888, Feb. 28, 1962]

§ 34.9 Contracts and agreements.

Training facilities and services required for the program of vocational training may be arranged through contracts or agreements with agencies, establishments, or organizations. These may include:

(a) Appropriate Federal, State, or local government agencies, or

(b) Private schools which have a recognized reputation in vocational education as successfully obtaining employment for its graduates in the fields of training approved by the Secretary or his authorized representative, for purposes of the program, or

(c) Corporations and associations with apprenticeship or on-the-job training programs recognized by industry and labor as leading to skilled employment.

[34 FR 17520, Oct. 30, 1969]

§ 34.10 Waiver or exception.

The rules set forth in this part are prescribed as required by section 1, of the act of August 3, 1956, 70 Stat. 986. Waiver of or exception to these rules may be made where such waiver or exception is not inconsistent with any terms of said statute, upon a finding by the Secretary of the Interior that such waiver or exception is justified by circumstances not contemplated by these rules and such action is desirable to carry out the purpose of the statute.

PART 35—STUDENT RIGHTS AND DUE PROCESS PROCEDURES

Sec.

35.1 Purpose.
35.2 Application to Bureau schools.
35.3 Rights of the individual student.
35.4 Due process.
35.5 Application to schools under Bureau contract.

AUTHORITY: 5 U.S.C. sec. 301.

SOURCE: 39 FR 32741, Sept. 11, 1974, unless otherwise noted.

§ 35.1 Purpose.

The regulations in this part govern establishing programs of student rights and due process procedures in Bureau of Indian Affairs schools and in schools that are operating under contract with the Bureau of Indian Affairs.

§ 35.2 Application to Bureau schools.

All Bureau of Indian Affairs schools shall be governed by the regulations set forth in this part and said regulations shall be expressly included as a part of the local school regulations of each Bureau of Indian Affairs school. Upon admission, all students of Bureau of Indian Affairs schools shall be given a copy of the school regulations governing the conduct of students and shall be notified of any amendments thereto.

§ 35.3 Rights of the individual student.

Individual students at Bureau of Indian Affairs schools have, and shall be accorded, the following rights:

(a) The right to an education.

(b) The right to be free from unreasonable search and seizure of their person and property, to a reasonable degree of privacy, and to a safe and secure environment.

(c) The right to make his or her own decisions where applicable.

(d) The right to freedom of religion and culture.

(e) The right to freedom of speech and expression, including symbolic expression, such as display of buttons, posters, choice of dress, and length of hair, so long as the symbolic expression does not unreasonably and in fact disrupt the educational process or endanger the health and safety of the student or others.

(f) The right to freedom of the press, except where material in student publications is libelous, slanderous, or obscene.

(g) The right to peaceably assemble and to petition the redress of grievances.

(h) The right to freedom from discrimination.

(i) The right to due process. Every student is entitled to due process in every instance of disciplinary action for alleged violation of school regulations for which the student may be subjected to penalties of suspension, expulsion, or transfer.

§ 35.4 Due process.

Due process shall include:

(a) Written notice of charges within a reasonable time prior to a hearing. Notice of the charges shall include reference to the regulation allegedly violated, the facts alleged to constitute the violation, and notice of access to all statements of persons relating to the charge and to those parts of the student's school record which will be considered in rendering a disciplinary decision.

(b) A fair and impartial hearing prior to the imposition of disciplinary action absent the actual existence of an emergency situation seriously and immediately endangering the health or safety of the student or others. In an emergency situation the official may impose disciplinary action not to exceed a temporary suspension, but shall immediately thereafter report in writing the facts (not conclusions) giving rise to the emergency and shall afford the student a hearing which fully comports with due process, as set forth herein, as soon as practicable thereafter.

(c) The right to have present at the hearing the student's parent(s) or guardian(s) (or their designee) and to be represented by lay or legal counsel of the student's choice. Private attorney's fees are to be borne by the student.

(d) The right to produce, and have produced, witnesses on the student's behalf and to confront and examine all witnesses.

(e) The right to a record of hearings of disciplinary actions, including written findings of fact and conclusions in all cases of disciplinary action.

(f) The right to administrative review and appeal.

(g) The student shall not be compelled to testify against himself.

(h) The right to have allegations of misconduct and information pertaining thereto expunged from the student's school record in the event the student is found not guilty of the charges.

§ 35.5 Application to schools under Bureau contract.

Non-Bureau of Indian Affairs schools which are funded under contract with the Bureau of Indian Affairs must also recognize these student rights.

PART 36—MAINTENANCE AND CONTROL OF STUDENT RECORDS IN BUREAU SCHOOLS

Sec.

36.1 Purpose and scope.
36.2 Definitions.
36.3 Student rights.
36.4 Annual notification of rights.
36.5 Access to records.
36.6 Limitations on access.
36.7 Access rights.
36.8 Destruction of records.
36.9 Procedures for granting access.
36.10 Right to challenge.
36.11 Informal proceedings.
36.12 Right to a hearing.
36.13 Right of appeal.
36.14 Consent.
36.15 Content of consent.
36.16 Copy to be provided to parents or eligible students.
36.17 Release of information for health or safety emergencies.
36.18 Record of access.
36.19 Transfer of information by third parties.
36.20 Directory information.
36.21 Standards for collection and maintenance of student records.
36.22 Assuring integrity of records.
36.23 Conduct of employees.

AUTHORITY: 35 Stat. 72 (25 U.S.C. 295); Pub. L. 93-579, 88 Stat. 1896; Sec. 438, Pub. L. 93-380, as amended; Pub. L. 94-142.

SOURCE: 43 FR 52024, Nov. 8, 1978, unless otherwise noted.

§ 36.1 Purpose and scope.

This part contains the regulations of the Bureau of Indian Affairs, U.S. Department of the Interior, governing the maintenance, control, and accessibility of student records. This part will apply to all educational institutions under the jurisdiction of the Bureau of Indian Affairs, whether operated under contract or otherwise.

§ 36.2 Definitions.

As used in this part:

(a) "Assistant Secretary" means the Assistant Secretary—Indian Affairs, Department of the Interior.

(b) "Educational institution" means any institution operated under the jurisdiction of the Bureau of Indian Affairs either directly or by contract, including, but not limited to, schools or dormitories from which Indian students attend public schools.

(c) "Eligible student" means a student who has become 18 years of age or is attending an institution of post-secondary education. When a student becomes an "eligible student," the permission required of and the rights given to the parents of the student shall thereafter only be required of and given to the student.

(d) "Parent" means a natural parent, an adoptive parent, the legal guardian, or a legal custodian of a student. (Where the natural parents are unavailable, a required written parental consent may be obtained from the person who has assumed custody of the student.) For purposes of the Education of All Handicapped Children Act, the term "parent" also includes a "surrogate" as referred to in 20 U.S.C. 1415(b)(1)(B).

(e) "Student records" means those records, files, documents, and other materials which contain information directly related to a student and which are maintained by an educational institution, or by a person acting for that institution. The term does not include:

(1) Records of any educational personnel which are in the sole possession of the maker and which are not accessible or revealed to any other person except a substitute.

(2) Records made and maintained in the normal course of business which relate exclusively to persons who are employed in an educational institution but do not attend that institution.

(3) Directory information as given in § 36.20.

(4) Records on a student who is 18 years of age or older, or is attending an institution of post-secondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or

assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

§ 36.3 Student rights.

The regulations in this part do not prevent educational institutions from giving noneligible students rights similar to those given to parents and eligible students. Educational institutions may do so at their discretion.

§ 36.4 Annual notification of rights.

(a) Each educational institution to which this part applies and which maintains records on students shall inform parents or eligible students of the rights given them by this part.

(b) In meeting the requirement in paragraph (a) of this section the educational institution shall give notice to parents and eligible students at least annually of the following:

(1) The types of education records and information contained in them which are directly related to students and maintained by the institution.

(2) The name and position of the official responsible for maintaining each type of record, the persons who have access to those records, and the purpose for which they have access.

(3) The policies of the institution for reviewing and expunging those records.

(4) The procedures established by the institution under § 36.5.

(5) The procedures for challenging the content of education records including those in § 36.10.

(6) The cost, if any, which will be charged to the parent or eligible student for reproducing copies of records under § 36.5.

(7) The categories of information which the institution has designated as "directory information" under § 36.20.

(c) The notice given to a parent or eligible student under this section shall be in a language considered by the institution to be understandable by the parent or eligible student.

§ 36.5 Access to records.

Educational institutions shall give parents of students or eligible students, who are or have been in attendance at the institutions, access to student records, except as stated in § 36.6.

§ 36.6 Limitations on access.

Educational institutions are not required to make available to students the following materials:

(a) Financial records of the parents of the student or any information contained in those records.

(b) Confidential letters and statements of recommendations, which were placed in any student's record prior to January 1, 1975, and which are not used for purposes other than those for which they were specifically intended.

(c) Those records listed in § 36.2(e) which are exempt from the definition of "student records."

§ 36.7 Access rights.

The right of access specified in § 36.5 shall include:

(a) The right to obtain a list of the types of student records which are maintained by the institution.

(b) The right to inspect and review the content of those records.

(c) The right to obtain copies of those records, the cost, if any, not to exceed the actual cost to the educational institution of reproducing the copies.

(d) The right to a response from the institution to reasonable requests for explanations and interpretations of those records.

(e) The right to an opportunity for a hearing to challenge the content of records.

(f) If any material or document in the record of a student includes information on more than one student, the right to inspect and review only that portion of such material or document as relates to that particular student or to be informed of the specific information contained in such part of such materials.

§ 36.8 Destruction of records.

This part does not prevent educational institutions from destroying any records, if not otherwise prevented by law. However, access shall be granted under § 36.5 before destroying student records where the parent or eligible student has requested access. Only records which are no longer relevant or necessary may be destroyed, subject to § 36.23(c).

§ 36.9 Procedures for granting access.

Each educational institution shall establish appropriate procedures for granting a request by parents for access to the records of their children, or by eligible students for access to their own records within a reasonable period of time. In no case shall access be withheld more than forty-five (45) days after the request has been made.

§ 36.10 Right to challenge.

Each educational institution shall give parents of students and eligible students, who are or have been in attendance at the institution, an opportunity to challenge the content of the student's records to:

(a) Insure that the records are not inaccurate, misleading, or otherwise violating the privacy or other rights of students.

(b) Provide an opportunity for correcting or deleting any inaccurate, misleading, or otherwise inappropriate data in the record.

(c) Insert into such records a written comment by the parents or eligible students pertaining to the content of such records.

§ 36.11 Informal proceedings.

Educational institutions may attempt to resolve differences with the parent of a student or the eligible student regarding the content of the student's records through informal meetings and discussions with the parent or eligible student.

§ 36.12 Right to a hearing.

Upon the request of the educational institution, the parent, or eligible student, a hearing shall be conducted under the procedures adopted and published by the institution. Such procedures shall include at least the following elements:

(a) The hearing shall be conducted and decided within a reasonable period of time following the request for the hearing.

(b) The hearing shall be informal and a verbatim record of proceedings will not be required. Interpreters will be utilized when necessary.

(c) The hearing shall be conducted by an institutional official or other party who does not have a direct interest in the outcome of the hearing.

(d) The parents or eligible student shall be given a full and fair opportunity to present evidence relevant to the issues raised under § 36.10.

(e) Within a reasonable period of time after the hearing ends, the hearing official shall make his recommendation in writing to the head of the educational institution. Within 20 days after receipt of the recommendation, the head of the institution shall issue his decision in writing to the parent or eligible student.

§ 36.13 Right of appeal.

If any parent or eligible student is adversely affected by the decision of the head of the institution, that party shall have appeal rights as given in 25 CFR Part 2. However, each official decision shall be issued within 30 days from receipt of the appeal.

§ 36.14 Consent.

Educational institutions shall not permit access to or the release of student records or personally identifiable information contained in them, other than directory information of students, without the written consent of the parents or of an eligible student, to any party other than the following:

(a) Local school officials, including teachers within the educational institution, who have been determined by the institution to have legitimate educational interests in the records.

(b) Officials of other schools or school systems at which a student is interested in enrolling. The student or parent must be notified of such release except in cases involving Bureau of Indian Affairs schools. All Bureau of Indian Affairs schools are considered to be components of one school

system whether operated under contract or otherwise.

(c) Persons having official involvement with a student's application for or grant of financial aid.

(d) Parents of a dependent student as defined in section 152 of the Internal Revenue Code of 1954, as amended.

(e) Accreditation agencies in order to carry out their accrediting functions.

(f) U.S. Office of Education officials and other governmental education officials when deemed necessary by the institution to carry out their official functions.

(g) An education testing center or similar institution as a part of its validation research which has been authorized by the school.

(h) In an emergency, any person to whom the information is necessary in the discretion of the school's administration in order to protect the student's health and safety, subject to § 36.17.

(i) Indian groups, contractors, grantees, professional social service organizations and personnel performing professional services, when necessary to carry out an official function authorized by the Bureau of Indian Affairs.

(j) Pursuant to the order of a court of competent jurisdiction; however, the parent or eligible student must be notified of such order in advance of compliance therewith by the educational institution.

§ 36.15 Content of consent.

The consent of a parent or eligible student requested under this part for the release of student records shall be in writing, signed and dated by the person giving the consent. The consent shall include:

(a) A specification of the records to be released.

(b) The reasons for release.

(c) The names of the parties to whom the records will be released.

§ 36.16 Copy to be provided to parents or eligible students.

Where the consent of a parent or eligible student is required under this part for the release of student records, a copy of the records to be released shall be provided on request to:

(a) The student's parents or the eligible student.

(b) The student who is not an eligible student, if desired by the parents.

§ 36.17 Release of information for health or safety emergencies.

(a) Educational institutions may release information from student records to appropriate persons in an emergency if the information is necessary to protect the health or safety of a student or other person. The factors to be used in determining whether records may be released under this section include the following:

(1) The seriousness of the threat to the health or safety of the student or other persons.

(2) The need for those records to meet the emergency.

(3) Whether the persons to whom the records are released are in a position to deal with the emergency.

(4) The extent to which time is of the essence in dealing with the emergency.

§ 36.18 Record of access.

(a) Each educational institution shall maintain a record kept with the student records of each student, which will indicate all parties other than those specified in § 36.14 which have requested or obtained access to those records and which will indicate specifically the legitimate interest that each party had in obtaining this information.

(b) A record of access shall be available only to:

(1) Parents or eligible students.

(2) The school official and his or her assistants who are responsible for the custody of such records.

(3) Persons or organizations authorized in and under the conditions of § 36.14.

§ 36.19 Transfer of information by third parties.

(a) Educational institutions shall not release personal information on a student except on the condition that the party to which the information is being transferred will not permit any other party to have access to the information without the written consent

of the parents or of the eligible students.

(b) With any information released to a party under paragraph (a) of this section, educational institutions shall include a written statement which informs the party of the requirement in paragraph (a) of this section.

§ 36.20 Directory information.

(a) Any educational institution making public directory information shall make a reasonable effort to individually notify the parent or eligible student of the categories of information which it has designated as directory information. The institution shall allow a reasonable period of time after notice has been given for a parent or eligible student to inform the institution that any or all of the information designated should not be released without the prior consent of the parent or eligible student.

(b) Directory information may include the following: A student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student, tribe, agency, area, name of parent, sex, and classification (grade). No other information may be included. Educational institutions have the right to limit the content of directory information.

§ 36.21 Standards for collection and maintenance of student records.

(a) Records shall contain only information about an individual which is relevant and necessary to accomplish a purpose of the Bureau required to be accomplished by statute or Executive order of the President.

(b) Student records which are used in making any determination about any student shall be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the student in making the determination.

(c) Information which may be used in determining a student's rights, benefits, and privileges under Federal programs shall be collected directly from the student or his parents, to the greatest extent practicable. In deciding whether collection of information from a parent or eligible student, as opposed to a third-party source is practicable, the following factors among others may be considered:

(1) Whether the nature of the information sought is such that it can only be obtained from a third party.

(2) Whether the cost of collecting the information from the parent or student is unreasonable, when compared with the cost of collecting it from a third party.

(3) Whether there is a risk that information collected from third parties, if inaccurate, could result in an adverse determination to the student concerned.

(4) Whether the information, if supplied by the parent or student, would have to be verified by a third party.

(5) Whether provisions can be made for verification by the parent of student of information collected from third parties.

(d) Each individual parent or eligible student who is asked to supply information about himself which will be added to a system of student records shall be notified of the basis for requesting the information, how it may be used, and what the consequences, if any, are of not supplying the information. At a minimum, the notice to the parent or eligible student must state:

(1) The authority (whether granted by statute or Executive order of the President) which authorizes requesting the information and whether disclosure of such information is mandatory or voluntary.

(2) The principle purpose or purposes for which the information is intended to be used.

(3) The routine uses which may be made of the information.

(4) The effects, if any, of not providing all or any part of the requested information.

(e) When information is collected on a standard form, the notice to the parent or eligible student shall be on the form or on a tear-off sheet attached to the form or on a separate sheet, whichever, is most practical.

(f) When information is collected by an interviewer, the interviewer shall provide the parent or eligible student with a written notice which the individual may retain. If the interview is conducted by telephone, however, the interviewer may summarize the notice for the individual and need not provide a copy to the individual unless the individual requests that a copy be mailed to him.

(g) A parent or eligible student may be asked to acknowledge, in writing, that he has been given the notice required by this section.

(h) No student records may be maintained describing how any individual exercises rights guaranteed by the first amendment to the Constitution unless:

(1) Expressly authorized by statute or by the individual about whom the student record is maintained; or

(2) Pertinent to and within the scope of an authorized law enforcement activity.

§ 36.22 Assuring integrity of records.

(a) Student records shall be maintained with appropriate administrative, technical and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(b) When maintained in manual form, student records shall be maintained, at a minimum, subject to the following safeguards, or safeguards giving comparable protection:

(1) Areas in which the student records are maintained or regularly used shall be posted with an appropriate warning, stating that access to the records is limited to authorized persons. The warning shall also summarize the requirements of § 36.23 and state that employees may be subject to a criminal penalty for the unauthorized disclosure of student records.

(2) During working hours, the area in which the student records are maintained or regularly used shall be occupied by authorized personnel, or access to the student records shall be restricted by their storage in locked metal file cabinets or a locked room.

(3) During nonworking hours, access to the student records shall be restricted by their storage in locked metal file cabinets or a locked room.

(4) Where a locked room is the method of security provided for a system, the educational institution responsible for the system shall, no later than December 31, 1978, supplement that security by:

(i) Providing lockable file cabinets or containers for the student records, or

(ii) Changing the lock or locks for the room so that they may not be opened with a master key. For the purpose of this paragraph, a master is a key which may be used to open rooms other than the room containing student records, unless those rooms are used by officials or employees authorized to have access to the student records.

(c) When maintained in computerized form, student records shall be maintained, at a minimum, subject to safeguards based on those recommended in the National Bureau of Standards' booklet, "Computer Security Guidelines for Implementing the Privacy Act of 1974" (May 30, 1975), and any supplements to it, which are adequate and appropriate to assure the integrity of records in the system.

(d) The education institution responsible for a system of student records shall be responsible for assuring that specific procedures are developed to assure that the student records in the system for which it is responsible are maintained with security meeting the regulations in this section. These procedures shall be in writing and shall be posted or otherwise periodically brought to the attention of employees working with the student records contained in the system.

§ 36.23 Conduct of employees.

(a) Employees whose duties require handling of student records shall, at all times, take care to protect the integrity, security, and confidentiality of these records.

(b) No employee of the educational institution may disclose student records unless disclosure is permitted under § 36.14 or made to the parent of

the student or eligible student to whom the record pertains.

(c) No employee of the educational institution may alter or destroy a student record, unless:

(1) Alteration or destruction is properly undertaken in the course of the employee's regular duties, or

(2) Alteration or destruction is required by an authorized administrative decision or the decision of a court of competent jurisdiction.

(d) The educational institution responsible for a system of student records shall be responsible for assuring that employees with access to the system are made aware of the requirements of this section.

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SUBCHAPTER F—ENROLLMENT

PART 41—PREPARATION OF ROLLS OF INDIANS

Sec.
41.1 Definitions.
41.2 Purpose.
41.3 Qualifications for enrollment and the deadline for filing applications.
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41.12 Certification and approval of roll.
41.13 Special instructions.

AUTHORITY: Sections 463 and 465 Revised Statutes, 25 U.S.C. 2 and 9.

SOURCE: 30 FR 7745, June 16, 1965, unless otherwise noted.

§ 41.1 Definitions.

(a) "Act" means any act of Congress authorizing the directing the Secretary to prepare a roll of a specific tribe or band of Indians.

(b) "Secretary" means the Secretary of the Interior or his authorized representative.

(c) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(d) "Director" means the Area Director or his authorized representative of the Bureau of Indian Affairs Office which has administrative jurisdiction over the local office responsible for administering the affairs of the tribe.

(e) "Superintendent" means the official or other designated representative of the Bureau of Indian Affairs in charge of the local office which has immediate administrative jurisdiction over the affairs of the tribe for which a roll is being prepared.

(f) "Staff Officer" means the Enrollment Officer or other person authorized to prepare the roll.

(g) "Tribal Committee" means the body of the tribe vested with authority to pass on enrollment matters.

(h) "Descendents" means those persons who are the issue of the ancestor through whom enrollment rights are claimed, namely, the children, grandchildren, etc. It does not include collateral relatives such as aunts, uncles, cousins, etc.

(i) "Sponsor" means a parent, recognized guardian, next friend, next of kin, spouse, executor or administrator of estate, the Director or other person who files an application for enrollment on behalf of another person.

(j) "Basic Roll" means the specific allotment, annuity, census or other roll designated in the act as the basis upon which a new roll is to be compiled.

(k) "Lineal ancestor" means an ancestor, living or deceased, who is related to an applicant by direct ascent, namely parent, grandparent, etc. It does not include collateral relatives such as aunts, uncles, etc.

[30 FR 7745, June 16, 1965, as amended at 33 FR 18154, Dec. 6, 1968]

§ 41.2 Purpose.

The regulations in this Part 41 are to govern the compilation of rolls of Indian tribes by the Secretary of the Interior pursuant to statutory authority. The regulations are not to apply in the compilation of tribal membership rolls where the responsibility for the preparation and maintenance of such rolls rests with the tribes.

§ 41.3 Qualifications for enrollment and the deadline for filing applications.

(a) Qualifications which must be met to establish eligibility for enrollment and the deadline for filing enrollment applications will be included in this Part 41 by appropriate amendments to this section.

(b)-(n) [Reserved]

(o) Snohomish, Upper Skagit, Snoqualmie, and Skykomish Tribes of Indians:

(1) All persons who meet the following requirements shall be entitled to be enrolled on the separate rolls of those tribes to share in the distribution of judgment funds awarded the Snohomish, Upper Skagit, Snoqualmie, and Skykomish Tribes in Indian Claims Commission dockets 92, 93, and 125:

(i) Who were born on or prior to and living on June 23, 1971;

(ii) Who are lineal descendants of members of the Snohomish Tribe, of the Upper Skagit Tribe, including the allied Suiattle-Sauk Band, and of the Snoqualmie, and Skykomish Tribes, as they were constituted in 1855: *Provided*, That no person shall be enrolled as a descendant of the Snohomish Tribe if he has shared or is eligible as of the date his eligibility for Snohomish is determined to share in a per capita distribution against the United States recovered by any other tribe.

(2) Applications for enrollment must be filed with the Superintendent, Western Washington Agency, Bureau of Indian Affairs, 3006 Colby Avenue, Everett, WA 98201, and must be postmarked on or before midnight on April 23, 1972.

(p)-(q) [Reserved]

(r) Mdewakanton and Wahpokoota Tribe of Sioux Indians. (1) All lineal descendants of the Mdewakanton and Wahpakoota Tribe of Sioux Indians who were born on or prior to and were living on October 25, 1972, whose names or the name of a lineal ancestor appears on any available records and rolls acceptable to the Secretary of the Interior and who are not members of the Flandreau Santee Sioux Tribe of South Dakota, the Santee Sioux Tribe of Nebraska, the Lower Sioux Indian Community at Morton, Minn., the Prairie Island Indian Community at Welch, Minn., or the Shakopee Mdewakanton Sioux Community of Minnesota shall be entitled to be enrolled under title I, section 101(b) of the act of October 25, 1972 (86 Stat. 1168), to share in the distribution of funds derived from a judgment awarded the Mississippi Sioux Indians.

(2) Applications for enrollment must be filed with the Area Director, Aberdeen area office, Bureau of Indian Affairs, 820 South Main Street, Aberdeen, S. Dak. 57401, and must be received no later than November 1, 1973. Applications received after that date will be denied for failure to file in time regardless of whether the applicant otherwise meets the requirements for enrollment.

(3) Each application for enrollment with any of the tribes named in paragraph (r)(1) of this section which may be rejected by the tribes shall be reviewed by the Director to determine whether the applicant meets the requirements for enrollment as a descendant of the Mdewakanton and Wahpakoota Tribe of Sioux Indians under paragraph (r)(1) of this section. Each rejection notice issued by the tribes shall contain a statement to the effect that the application is being given such review.

(s) Sisseton and Wahpeton Mississippi Sioux Tribe. (1) All lineal descendants of the Sisseton and Wahpeton Mississippi Sioux Tribe who were born on or prior to and were living on October 25, 1972, whose names or the name of a lineal ancestor appears on any available records and rolls acceptable to the Secretary of the Interior and who are not members of the Devils Lake Sioux Tribe of North Dakota, the Sisseton and the Wahpeton Sioux Tribe of South Dakota, or the Assiniboine and Sioux Tribes of the Fort Peck Reservation shall be entitled to be enrolled under title II, section 201(b) of the act of October 25, 1972 (86 Stat. 1168), to share in the distribution of certain funds derived from a judgment awarded the Mississippi Sioux Indians.

(2) Applications for enrollment must be filed with the Area Director, Aberdeen area office, Bureau of Indian Affairs, 820 South Main Street, Aberdeen, S. Dak. 57401, and must be received no later than November 1, 1973. Applications received after that date will be denied for failure to file in time regardless of whether the applicant otherwise meets the requirements for enrollment.

(3) Each application for enrollment with any of the tribes named in paragraph (s)(1) of this section which may be rejected by the tribes shall be reviewed by the Director to determine whether the applicant meets the requirements for enrollment as a descendant of the Sisseton and Wahpeton Mississippi Sioux Tribe under paragraph (s)(1) of this section. Each rejection notice issued by the tribes shall contain a statement to the effect that

the application is being given such review.

(t) *Northern Paiute Indians.* (1) All persons who meet the following requirements shall be entitled to be enrolled to share in the distribution of judgment funds awarded the Northern Paiute Indians in Indian Claims Commission Docket 87:

(i) Persons who were born on or prior to and living on October 10, 1974, and

(ii) Who are lineal descendants of Northern Paiute Indians and

(iii) Whose name or whose lineal ancestor's name appears on any available census roll or other record or evidence acceptable to the Secretary, and who is identified as being of Northern Paiute ancestry.

(2) Any person who has shared in the awards granted by the Indian Claims Commission in Dockets 88, 330 and 330-A, to the Southern Paiute Indian Nation; or in Dockets 31, 37, 80, 80-D, 176, 215, 333, and 347, to "Certain Indians of California"; or in Dockets 351 and 351-A to the Chemehuevis; or in Docket 17, to the Malheur Paiutes; or whose Indian ancestry is derived solely from the Walpapi Paiutes, Yahooskin Snakes, Bannocks, or Western Monos; or who is a member of the Quechan Tribe or of the Washoe Tribe of Nevada and California shall not be eligible to be enrolled to share in the Northern Paiute judgment funds.

(3) Applications for enrollment must be filed with the Superintendent, Bureau of Indian Affairs, Western Nevada Agency, Stewart, Nevada 89437, on the form provided for that purpose, and must be received by the Superintendent by close of business not later than October 13, 1975.

(u)-(v) [Reserved]

(w) Lower Skagit Tribe of Indians. (1) All persons of Lower Skagit ancestry born on or prior to and living on February 18, 1975, who are lineal descendants of a member of the tribe as it existed in 1859 based on the 1919 Roblin Roll and other records acceptable to the Commissioner, shall be entitled to have their names placed on the roll, to be prepared and used as the basis to distribute the judgment funds awarded the Lower Skagit Tribe in Indian Claims Commission docket 294. Proof of Upper Skagit ancestry will not be acceptable as proof of Lower Skagit ancestry.

(2) Applications for enrollment must be filed with the Superintendent, Western Washington Agency, Bureau of Indian Affairs, 3006 Colby Avenue, Everett, Washington 98201, and must be received by close of business six months from the date of publication of the final regulations in the FEDERAL REGISTER. Applications received after that date will be denied for failure to file in time regardless of whether the applicant otherwise meets the requirements for enrollment.

(3) Payment of shares will be made in accordance with Parts 60 and 104 of this chapter.

(x) Kikiallus Tribe of Indians. (1) All persons of Kikiallus ancestry born on or prior to and living on February 18, 1975, who are lineal descendants of a member of the tribe as it existed in 1859 based on the 1919 Roblin Roll and other records acceptable to the Commissioner, shall be entitled to have their names placed on the roll, to be prepared and used as the basis to distribute the judgment funds awarded the Kikiallus Tribe in Indian Claims Commission docket 263.

(2) Applications for enrollment must be filed with the Superintendent, Western Washington Agency, Bureau of Indian Affairs, 3006 Colby Avenue, Everett, Washington 98201, and must be received by close of business six months from the date of publication of the final regulations in the FEDERAL REGISTER. Applications received after that date will be denied for failure to file in time regardless of whether the applicant otherwise meets the requirements for enrollment.

(3) Payment of shares will be made in accordance with Parts 60 and 104 of this chapter.

(y) Swinomish Tribe of Indians. (1) All persons of Swinomish ancestry born on or prior to and living on December 10, 1975, who are lineal descendants of a member of the tribe as it existed in 1859 based on the 1919 Roblin Roll and other records acceptable to the Commissioner, shall be entitled to have their names placed on the roll, to be prepared and used as

the basis to distribute the judgment funds awarded the Swinomish Tribe in Indian Claims Commission docket 233.

(2) Applications for enrollment must be filed with the Superintendent, Western Washington Agency, Bureau of Indian Affairs, 3006 Colby Avenue, Everett, Washington 98201, and must be received by close of business six months from the date of publication of the final regulations in the FEDERAL REGISTER. Applications received after that date will be denied for failure to file in time regardless of whether the applicant otherwise meets the requirements for enrollment.

(3) Payment of shares will be made in accordance with Parts 60 and 104 of this chapter.

(z) Samish Tribe of Indians. (1) All persons of Samish ancestry born on or prior to and living on December 10, 1975, who are lineal descendants of a member of the tribe as it existed in 1859 based on any records acceptable to the Commissioner, shall be entitled to have their names placed on the roll to be prepared and used as the basis to distribute the judgment funds awarded the Samish Tribe in Indian Claims Commission docket 261.

(2) Applications for enrollment must be filed with the Superintendent, Western Washington Agency, Bureau of Indian Affairs, 3006 Colby Avenue, Everett, Washington 98201, and must be received by close of business six months from the date of publication of the final regulations in the FEDERAL REGISTER. Applications received after that date will be denied for failure to file in time regardless of whether the applicant otherwise meets the requirements for enrollment.

(3) Payment of shares will be made in accordance with Parts 60 and 104 of this chapter.

(aa) [Reserved]

(bb) Cherokee Band of Shawnee Indians. (1) All persons of Cherokee Shawnee ancestry born on or prior to and living on March 5, 1976, who are lineal descendants, except members of the Absentee Shawnee Tribe of Oklahoma, of the Shawnee Tribe of Oklahoma, of the Shawnee Nation as it existed in 1854, shall be entitled to have their names placed on the roll, based on the roll of Cherokee Shawnee compiled pursuant to the Act of March 2, 1889 (25 Stat. 994), and any other records acceptable to the Commissioner to be prepared and used as the basis to distribute that portion of the judgment funds awarded the Absentee Shawnee Tribe of Oklahoma (on behalf of the Shawnee Nation) in Indian Claims Commission docket 334-B, which have been set aside for the Cherokee Band of Shawnee Indians of Oklahoma.

(2) Applications for enrollment must be filed with the Area Director, Muskogee Area Office, Bureau of Indian Affairs, Muskogee, Oklahoma 74401, and must be received by close of business six months from the date of publication of the final regulations in the FEDERAL REGISTER. Applications received after that date will be denied for failure to file in time regardless of whether the applicant otherwise meets the requirements for enrollment.

(cc) Saginaw, Swan Creek, and Black River Bands of Chippewa Indians.

(1) All persons who meet the following requirements for eligibility shall be entitled to be enrolled to share in the distribution of the judgment funds awarded the Saginaw, Swan Creek, and Black River Bands of Chippewa Indians in Indian Claims Commission docket No. 57:

(i) They were born on or prior to and living on November 12, 1977;

(ii) Their name or the name of a lineal ancestor appears on (*a*) the 1868 census of the Kansas Swan Creek and Black River Chippewas; (*b*) the 1900 enrollment schedules of the United Band of Chippewa and Munsee of Kansas, appearing thereon as a Chippewa; (*c*) allotment schedules of the Saginaw, Swan Creek, and Black River Bands of Chippewa Indians dated Febrary 6, 1871, June 3, 1871, April 1, 1872 (two schedules), November 10, 1883, November 13, 1885 (two schedules), and November 7, 1891; (*d*) the March 22, 1939, revised membership roll of the Saginaw Chippewa Indian Tribe of Michigan; (*e*) the records as a person of Chippewa Indian descent who received a tract of land pursuant to article 3 of the treaty of September 24, 1819 (7 Stat. 203); or (*f*) any other

record or document which is acceptable to the Secretary.

(2) No person shall be eligible to be enrolled under this paragraph who is not a citizen of the United States or who is enrolled or entitled to be enrolled with the Saginaw Chippewa Indian Tribe of Michigan.

(3) Applications must be filed with the Superintendent, Michigan Agency, Bureau of Indian Affairs, P.O. Box 884, Sault Ste. Marie, Michigan 49783, on forms provided for that purpose. Applications for enrollment must be received by the Superintendent no later than the close of business, April 1, 1979.

(dd) *Potawatomi Indians of Michigan and Indiana.* (1) All persons born on or prior to and living on March 6, 1978,

(i) Who are citizens of the United States, and

(ii) Whose names appear on or as lineal descendants can trace their ancestry to persons designated on the following official records of Potawatomi Indians or Michigan and Indiana: Cadman payment roll of 1896, Taggart census roll of 1904, other payment or annuity rolls of persons designated as "Potawatomi Indians of Michigan and Indiana," Huron Band, Pokagon Band, or "Notawasepi and other Bands," acceptable to the Secretary, and

(iii) Who are not enrolled or entitled to be enrolled as members of the Citizen Band of Potawatomi Indians, Oklahoma, Prairie Band of Potawatomi Indians, Kansas, Hannahville Indian Community of Michigan, or the Forest County Potawatomi Community, Wisconsin.

(2) Applications for enrollment must be filed with the Superintendent, Michigan Agency, Bureau of Indian Affairs, P.O. Box 884, Sault Ste. Marie, Mich. 49783, and must be received at the agency no later than close of business November 15, 1979. Applications received after that date will be rejected for failure to file in time, regardless of whether the applicant otherwise meets the requirements for enrollment.

[31 FR 16565, Dec. 28, 1966, as amended at 32 FR 5621, Apr. 6, 1967; 32 FR 10058, July 8, 1967; 32 FR 12790, Sept. 7, 1967; 32 FR 15471, Nov. 7, 1967; 32 FR 16099, Nov. 23, 1967; 33 FR 18154, Dec. 6, 1968; 33 FR 19174, Dec. 24, 1968; 35 FR 14394, Sept. 12, 1970; 35 FR 17840, Nov. 20, 1970; 36 FR 8366, May 5, 1971; 36 FR 19251, Oct. 1, 1971; 37 FR 17028, Aug. 24, 1972; 38 FR 9588, Apr. 18, 1973; 38 FR 11085, May 4, 1973; 38 FR 13737, May 25, 1973; 40 FR 17022, Apr. 16, 1975; 40 FR 27444, June 30, 1975; 41 FR 5387, Feb. 6, 1976; 41 FR 33556, Aug. 8, 1976; 41 FR 52453, Nov. 30, 1976; 41 FR 54487, Dec. 14, 1976; 42 FR 8140, Feb. 9, 1977; 43 FR 19649, May 8, 1978; 43 FR 41388, Sept. 18, 1978; 44 FR 4667, Jan. 23, 1979; 44 FR 19187, Apr. 2, 1979]

§ 41.4 Application forms.

(a) Application forms will be furnished by the Director, Superintendent or other designated persons upon written or oral request. Each person furnishing application forms shall keep a record of the names of the individuals to whom applications are given, as well as the control numbers of the forms and the date furnished. Instructions for completing and filing applications shall be furnished with each form. The form shall indicate prominently the deadline for filing the application.

(b) Among other information, each application shall contain:

(1) Certification as to whether application is for a natural child or an adopted child of the parent through whom eligibility is claimed.

(2) If the application is filed by a sponsor, the name, address, and relationship of sponsor to the applicant.

(3) A control number for the purpose of keeping a record of applications furnished interested individuals.

§ 41.5 Filing of applications.

(a) Any person who desires to be enrolled and believes he meets the requirements for enrollment specified in the regulations of this part must file or have filed in his behalf a completed application form with the Director, Superintendent, or other designated person on or before the deadline specified in § 41.3. Except as provided in paragraph (b) of this section, written application forms for minors, mentally incompetent persons or other persons in need of assistance, members of the Armed Services or other services of the U.S. Government and/or any members of their immediate families stationed in Alaska, Hawaii, or else-

where outside the Continental United States, or a person who died after the date of the act, may be filed by the sponsor on or before the specified deadline.[1]

(b) In the preparation of a roll of Tlingit and Haida Indians of Alaska sponsors may file applications on behalf of minors, mentally incompetent persons, or other persons in need of assistance, members of the Armed Services or other services of the United States or Canadian Governments and/or any members of their immediate families stationed outside the limits of Alaska, or a person who died after the date of the act.[1]

[31 FR 7744, June 1, 1966]

§ 41.6 Burden of proof.

The burden of proof rests upon the applicant to establish his eligibility for enrollment. Documentary evidence such as birth certificates, death certificates, baptismal records, copies of probate findings, or affidavits, may be used to support claim for enrollment. Records of the Bureau of Indian Affairs may be used to establish eligibility.

§ 41.7 Review of applications by tribal authorities.

Whenever practicable the Secretary shall consult with tribal authorities, who shall have 3 months from the deadline for filing applications to examine the applications for the purpose of recommending to the Director approval or rejection of the applications. A recommendation for the rejection of any application shall be supported by a memorandum setting forth the reasons for the adverse recommendation.

§ 41.8 Action by the Director.

(a) The Director shall consider each application and, when applicable, the tribal recommendation thereon. Upon determination as to the eligibility of an applicant, the Director shall notify the person who filed the application in writing of his decision. If such determination is favorable, the name of the applicant shall be placed on the roll. If the decision is adverse, the person who filed the application shall be notified of such decision by certified mail, to be received by addressee only, return receipt requested, together with a full explanation of the reasons therefor and of his right of appeal to the Secretary. (If correspondence is sent outside of the States of the United States, it may be necessary to use registered mail.) If an individual files applications on behalf of more than one person, one notice of eligibility or rejection may be addressed to the person who filed the applications. However, said notice must list the name of each person involved.

(b) To avoid hardship or gross injustice, the Director may waive technical deficiencies in applications or other submissions.

[30 FR 7745, June 16, 1965, as amended at 35 FR 14394, Sept. 12, 1970]

§ 41.9 Appeals.

Appeals from rejected applications must be in writing, and filed pursuant to Part 42 of this subchapter.

§ 41.10 Decision of the Secretary on appeals.

The decision of the Secretary on an appeal shall be final and conclusive, and written notice of the decision shall be given the applicant or sponsor. When so directed by the Secretary, the Commissioner shall cause to be entered on the roll the name of any person whose appeal has been sustained.

§ 41.11 Preparation of roll.

The staff officer shall prepare a minimum of five copies of the roll of those persons determined to be eligible for enrollment. The roll shall contain for each person a roll number, name, address, sex, date of birth, and, when required by law, degree of Indian blood, and, in the remarks column, when applicable, the basic roll number, date of the basic roll, name and relationship of ancestor on the basic roll through whom eligibility was established.

[1] Criminal penalties are provided by statute for knowingly filing false information in such statements, 18 U.S.C. 1001.

§ 41.12 Certification and approval of roll.

A certificate shall be attached to the roll by the staff officer certifying that to the best of his knowledge and belief the roll contains only the names of those persons who were determined to meet the requirements for enrollment. The commissioner shall approve the roll.

§ 41.13 Special instructions.

To facilitate the work of the Director, the Commissioner may issue special instructions not inconsistent with the regulations in this Part 41.

PART 42—ENROLLMENT APPEALS

Sec.
42.1 Definitions.
42.2 Purpose.
42.3 Who may appeal.
42.4 Filing of an appeal.
42.5 Supporting evidence.
42.6 Advising tribe.
42.7 Action by the Director.
42.8 The decision of the Secretary on appeals.
42.9 Special instructions.

AUTHORITY: Secs. 463 and 465 Revised Statutes, 25 U.S.C. 2 and 9.

SOURCE: 30 FR 7746, June 16, 1965, unless otherwise noted.

§ 42.1 Definitions.

As used in this Part 42:

(a) "Secretary" means the Secretary of the Interior, or his authorized representative.

(b) "Commissioner" means the Commissioner of Indian Affairs, or his authorized representative.

(c) "Director" means the Area Director, or his authorized representative, of the Bureau of Indian Affairs office which has administrative jurisdiction over the local office responsible for administering the affairs of the tribe.

(d) "Superintendent" means the official or other authorized representative in charge of the local Bureau of Indian Affairs office having immediate administrative jurisdiction over the affairs of the Indian tribe for which a roll is being prepared.

(e) "Field Office" means the local office of the Bureau of Indian Affairs which has responsibility for administering the affairs of the tribe.

(f) "Tribal Committee" means the body of the tribe vested with authority to pass on enrollment matters.

(g) "Constitution" means the written organizational framework for the governing of the tribe and/or any valid enrollment ordinance or resolution a tribe may adopt.

(h) "Sponsor" means a parent, recognized guardian, next friend, next of kin, spouse, executor or administrator of estate, the Director or other person who files an application for enrollment on behalf of another person.

§ 42.2 Purpose.

The regulations in this Part 42 are for the purpose of establishing the procedure for filing appeals in conjunction with the rejection of any name from a roll of an Indian tribe when final approval thereof rests within the purview of the Secretary either because of provisions in tribal constitutions or specific acts of Congress. The regulations are not to apply in those instances where the procedures for filing appeals by applicants rejected for tribal membership are prescribed in tribal documents.

§ 42.3 Who may appeal.

(a) Any person who has been rejected for enrollment may file or have filed in his behalf an appeal from an adverse enrollment action. The burden of proof of establishing eligibility is on the appellant. Except as provided in paragraph (b) of this section, in the case of minors, mentally incompetent persons or other persons in need of assistance, members of the Armed Services or other services of the U.S. Government and/or any members of their immediate families stationed in Alaska or Hawaii or elsewhere outside the Continental United States, or a person who died after the date of any relevant act, an appeal may be filed by a sponsor. The burden of proof of establishing eligibility is on the appellant.

(b) In the preparation of a roll of Tlingit and Haida Indians of Alaska, the sponsors may file appeals on behalf of minors, mentally incompetent persons or other persons in need of assistance, members of the Armed Services or other services of the United States or Canadian Govern-

ments and/or any members of their immediate families stationed outside the limits of Alaska, or a person who died after the date of the act.

[31 FR 7745, June 1, 1966]

§ 42.4 Filing of an appeal.

The appeal shall be in writing addressed to the Secretary and must be received by the official designated in the letter of rejection before the close of business on the 30th day after receipt of the rejection notice, except in those cases where the letter of rejection is delivered to an address in Alaska or Hawaii or elsewhere outside the Continental United States the addressee will have 60 instead of 30 days to file an appeal with the official designated in the letter of rejection. However, if the roll being prepared is for a tribe, band, or group of Indians in Alaska, in cases where the letter of rejection is delivered to an address in Alaska the addressee will have 30 days in which to appeal the rejection of the application and, where the letter of rejection is delivered to an address outside the limits of Alaska the addressee will have 60 days in which to file an appeal. In computing the 30- or 60-day period, the count begins with the day following receipt of the rejection notice and continues for 30 or 60 consecutive days. If, however, the 30th or 60th day falls on a Saturday, Sunday, or legal holiday, the period would end on the first working day thereafter.

[31 FR 7745, June 1, 1966]

§ 42.5 Supporting evidence.

The appeal should include any supporting evidence not previously furnished and may include a copy of or reference to any Bureau or tribal records having a direct bearing on the appellant's eligibility. The appellant may furnish affidavits from persons having personal knowledge of the facts at issue.[1] An appeal may request additional time to submit supporting evidence. A period considered reasonable for such submissions may be granted by the official receiving the appeal.

[1] Criminal penalties are provided by statute for knowingly filing false information in such statements, 18 U.S.C. 1001.

§ 42.6 Advising tribe.

Whenever applicable, the Superintendent or the Director shall notify the tribal committee of the receipt of the appeal and shall give the tribal committee the opportunity to examine the appeal and to present such evidence as it may consider pertinent to the action being appealed. The tribal committee shall have not to exceed 30 days from receipt of notification of the appeal in which to present in writing such statements as it may deem pertinent, supported by any tribal records which have a bearing on the case.

§ 42.7 Action by the Director.

If after review of the evidence or appeal, the Director is satisfied that the right to enrollment has been established, the appellant shall be so notified in writing and his name entered on the roll. If the Director again determines the appellant is ineligible, he shall so notify the appellant and shall forward the appeal, together with the complete record and his recommendations thereon to the Commissioner for transmittal to the Secretary.

§ 42.8 The decision of the Secretary on appeals.

The Secretary will consider the record as presented, together with such additional information he may consider pertinent. Any such additional information shall be specifically identified in his decision. The decision of the Secretary on an appeal shall be final and conclusive and written notice of the decision shall be given to the appellant.

§ 42.9 Special instructions.

To facilitate the work of the Director, the Commissioner may issue special instructions not inconsistent with the regulations in this Part 42.

PART 43—PREPARATION OF A ROLL OF EASTERN CREEK INDIANS

Sec.

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43.5 Filing of applications and information forms.
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43.10 Preparation of roll.
43.11 Certification and approval of the roll.
43.12 Special instructions.

AUTHORITY: 5 U.S.C. sec. 301, R.S. secs. 463 and 465; 25 U.S.C. 2 and 9, and 87 Stat. 466.

SOURCE: 44 FR 19188, Apr. 2, 1979, unless otherwise noted.

§ 43.1 Definitions.

As used in these regulations:

(a) "Plan" means the plan for the use and distribution of Creek judgment funds awarded in docket 275 before the Indian Claims Commission, prepared pursuant to the Act of October 19, 1973, and effective June 15, 1978.

(b) "Secretary" means the Secretary of the Interior or his authorized representative.

(c) "Assistant Secretary" means the Assistant Secretary of the Interior for Indian Affairs or his authorized representative.

(d) "Director" means the Area Director, Muskogee Area Office, Bureau of Indian Affairs, or his authorized representative acting under delegated authority.

(e) "Staff officer" means the Enrollment Officer or other person authorized to prepare the roll.

(f) "Living" means born on or prior to and living on the date specified.

(g) "Lineal ancestor" means an ancestor, living or deceased, who is related to the applicant by direct ascent; namely, parent, grandparent, et cetera. It does not include collateral relatives such as brothers, sisters, aunts, uncles, et cetera.

(h) "Descendants" means those persons who are the issue of the ancestor through whom enrollment rights are claimed, namely the children, grandchildren, et cetera. It does not include collateral relatives such as brothers, sisters, nieces, nephews, cousins, et cetera.

(i) "Sponsor" means a parent, recognized guardian, next friend, next of kin, spouse, executor, or administrator of estate, the Director, or other person who files an application for enrollment on behalf of another person.

(j) "1968 roll" means the roll of persons designated as Eastern Creek who were eligible to share in the distribution of Creek judgment funds in docket 21 prepared under the act of September 21, 1968, 82 Stat. 855. It does not include those Creek descendants who established eligibility through an ancestor who was a member of the Creek Nation of Oklahoma.

(k) "Indian lineage" means descent by blood from an Indian lineal ancestor.

§ 43.2 Purpose.

The regulations in this part are to govern the compilation of a roll of persons who meet the requirements specified in the plan to serve as the basis for distributing the Eastern Creek portion of judgment funds awarded the Creek Nation of Indians in Indian Claims Commission Docket 275.

§ 43.3 Qualifications for enrollment and the deadline for filing.

(a) The roll shall contain the names of persons living on June 15, 1978, who were listed on the 1968 roll as Eastern Creeks and those who file timely applications and establish that:

(1) They are the children of persons whose names appear on the 1968 roll, regardless of whether the enrolled parent is living or deceased.

(2) They were not enrolled on the 1968 roll although they met the requirements for enrollment as Eastern Creeks as specified in section 1 of the act of September 21, 1968, 82 Stat. 855, i.e.,

(i) They were living on September 21, 1968.

(ii) Their names or the names of lineal ancestors appear on any of the documents listed below or on any available census rolls or other records acceptable to the Secretary, which identify the person as a Creek Indian, including ancient documents or records of the United States located in the National Archives, State, or county records in the archives of the several States or counties therein, or

in the courthouses thereof, and other records that would be admissible as evidence in an action to determine Indian lineage.

(A) Claims of Friendly Creek Indians paid under the act of March 3, 1817 (H.R. Doc. 200, 20:1, 1828);

(B) Census of the Creek Nation, 1833, made pursuant to article 2 of the treaty concluded March 24, 1832 (Senate Doc. 512, 1835, Emigration Correspondence, 1831-33, pp. 239-395);

(C) Land Location Registers of Creek Indian Lands, made pursuant to the treaty of March 25, 1832;

(D) Any emigration or muster rolls of Creek Indians;

(E) Any lists of self-emigrant Creek claimants (including those contained in Senate Ex. Doc. 198, 50:1, 1888, and H.R. Ex. Doc. 238; 51:2, 1891).

(3) They are children of persons who qualify for enrollment under (2) of this paragraph.

(b) Applications must be filed with the Area Director, Bureau of Indian Affairs, Federal Building, Muskogee, Okla. 74401, and must be received in his office no later than the close of business on November 15, 1979. Applications received after that date will be rejected for failure to file on time, regardless of whether the applicant otherwise meets the requirements for enrollment. If the filing deadline falls on a Saturday, Sunday, or legal holiday or other nonbusiness day, the deadline will be the next working day thereafter.

§ 43.4 Application and information forms.

(a) Persons entitled to enrollment under paragraph (a)(1) of § 43.3 (1968 enrollees) do not need to reapply for enrollment. They must, however, complete an information form advising the Director of any changes in name and/or address. The Director shall mail an information form to each person on the 1968 roll using the last address of record. Changes in information on the roll will be made only if information form is signed by an adult 1968 enrollee, if living, or the parent or guardian having legal custody of a minor 1968 enrollee. The information form may also be used to notify the Director of the date of death of a deceased 1968 enrollee.

(b) Applications to be filed by applicants for enrollment will be furnished by the Director, or other designated persons upon written or oral request. Each person furnishing application forms shall keep a record of the names of individuals to whom applications are given, as well as the control numbers of the forms and the date furnished. Instructions for completing and filing applications shall be furnished with each form. The form shall indicate prominently the deadline for filing applications.

(c) Among other information, each application shall contain:

(1) Certification as to whether application is for a natural child or an adopted child of the parent through whom eligibility is claimed.

(2) If the application is filed by a sponsor, the name and address of sponsor and relationship to applicant.

(3) A control number for the purpose of keeping a record of applications furnished interested individuals.

§ 43.5 Filing of applications and information forms.

(a) Any person, except a 1968 enrollee, who desires to be enrolled and believes he meets the requirements for enrollment specified in the plan and the regulations in this part must file or have filed for him a completed application form with the Director or other designated person on or before the deadline specified in § 43.3.

(b) Written application forms for minors, mentally incompetent persons or other persons in need of assistance, for members of the Armed Services or other services of the U.S. Government and/or members of their families stationed in Alaska, Hawaii, or elsewhere outside the continental United States, or for a person who died after June 15, 1978, may be filed by the sponsor on or before the deadline.[1]

(c) Every applicant or sponsor shall furnish the applicant's mailing address on the application. Thereafter, he shall promptly notify the Director of any change in address, giving appropriate identification of the applica-

[1] Criminal penalties are provided by statute for knowingly filing false information in such settlements, 18 U.S.C. 1001.

tion; otherwise the address as stated shall be acceptable as the proper address.

§ 43.6 Burden of proof.

The burden of proof of eligibility for enrollment rests upon the applicant. Documentary evidence such as birth certificates, baptismal records, death certificates, copies of probate findings or affidavits must be used to support claim for enrollment.

§ 43.7 Action by the Director.

(a) The Director shall consider each application. Upon determining an applicant's eligibility, the Director shall notify the applicant or sponsor, as applicable, in writing of his decision. If the decision is favorable, the name of the applicant shall be placed on the roll. If the Director decides the applicant is not eligible, he shall notify the applicant or sponsor, as applicable, in writing by certified mail, to be received by the addressee only, return receipt requested, and shall explain fully the reasons for rejection and of the right to appeal to the Secretary. (If correspondence is sent out of the States of the United States, it may be necessary to use registered mail.) If an individual files applications on behalf of more than one person, one notice of eligibility or rejection may be addressed to the person who filed the applications. However, said notice must list the name of each person involved. If a certified or registered notice is returned as "*Unclaimed*" the Director shall remail the notice by regular mail together with an acknowledgment of receipt form to be completed by the addressee and returned to the Director. If the acknowledgment of receipt is not returned, computation of the appeal period shall begin on the date the notice was remailed. Certified or registered notices returned for any reason other than "*Unclaimed*" shall not be remailed.

(b) A notice of eligibility or rejection is considered to have been made on the date (1) of delivery indicated on the return receipt, (2) of acknowledgment of receipt, (3) of personal delivery, or (4) of the return by the post office of an undelivered certified or registered letter.

(c) In all cases where an applicant is represented by an attorney, such attorney will be recognized as fully controlling the same on behalf of his client; and service of any document relating to the application shall be considered to be service on the applicant he represents. Where an applicant is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

(d) To avoid hardship or gross injustice, the Director may waive technical deficiencies in applications or other submissions. Failure to file by the deadline does not constitute a technical deficiency.

§ 43.8 Appeals.

Appeals from rejected applications must be in writing and must be filed pursuant to Part 42 of this subchapter, a copy of which shall be furnished with each notice of rejection.

§ 43.9 Decision of the Secretary on appeals.

The decision of the Secretary on an appeal shall be final and conclusive, and written notice of the decision shall be given to the applicant or sponsor. When so directed by the Secretary, the Assistant Secretary shall cause to be entered on the roll the name of any person whose appeal has been sustained.

§ 43.10 Preparation of roll.

The staff officer shall prepare a minimum of five copies of the roll of those persons determined to be eligible for enrollment, including those whose appeals were sustained. In addition to other information which may be shown, the complete roll shall contain for each person an identification number, name, address, sex, date of birth, and in the remarks column, when applicable, the basic roll number, date of the basic roll, and name and relationship of the ancestor on the basic roll through whom eligibility was established.

§ 43.11 Certification and approval of the roll.

A certificate shall be attached to the roll by the staff officer certifying that to the best of his knowledge and belief

the roll contains only the names of those persons who were determined to meet the requirements for enrollment. The Director shall approve the roll.

§ 43.12 Special instructions.

To facilitate the work of the Director the Assistant Secretary may issue special instructions not inconsistent with the regulations in this part.

PART 43a—PREPARATION OF A ROLL OF PYRAMID LAKE PAIUTE INDIANS

Sec.

43a.1 Definitions.
43a.2 Purpose.
43a.3 Qualifications for enrollment and the deadline for filing.
43a.4 Application forms.
43a.5 Filing of applications.
43a.6 Burden of proof.
43a.7 Action by the tribe.
43a.8 Action by the Superintendent.
43a.9 Appeals.
43a.10 Decision of the Secretary on appeals.
43a.11 Preparation of roll.
43a.12 Certification and approval of the roll.
43a.13 Special instructions.

AUTHORITY: 5 U.S.C. 301, 463 and 465 of revised statutes (25 U.S.C. 2 and 9), and 209 DM 8.

SOURCE: 45 FR 17571, Mar. 19, 1980, unless otherwise noted.

§ 43a.1 Definitions.

As used in these regulations:

(a) "Plan" means the plan for the use and distribution of Pyramid Lake Paiute judgment funds awarded in Docket 87-B before the Indian Claims Commission, prepared pursuant to the Act of October 19, 1973, and effective June 12, 1979.

(b) "Secretary" means the Secretary of the Interior or his authorized representative.

(c) "Assistant Secretary" means the Assistant Secretary of the Interior for Indian Affairs or his authorized representative.

(d) "Director" means the Area Director, Phoenix Area Office, Bureau of Indian Affairs or his authorized representative acting under delegated authority.

(e) "Superintendent" means the Superintendent, Western Nevada Agency, Bureau of Indian Affairs or his authorized representative acting under delegated authority.

(f) "Staff Officer" means the Enrollment Officer or other person authorized to prepare the roll.

(g) "Tribe" means the Pyramid Lake Paiute Tribe of Nevada.

(h) "Tribal Council" means the governing body of the Pyramid Lake Paiute Tribe.

(i) "Tribal Enrollment Committee" means the tribal committee responsible for assisting the Tribal Council in enrollment.

(j) "Living" means born on or prior to and living on June 12, 1979.

(k) "Resident" means one who makes the Pyramid Lake Indian Reservation his fixed and permanent home and to which, if he is absent, he intends to return.

(l) "Constitution" means the written organizational framework for the governing of the tribe and/or any valid document, enrollment ordinance, or resolution the tribe may adopt pursuant to its constitution.

(m) "Sponsor" means a parent, recognized guardian, next friend, next of kin, spouse, executor or administrator of estate, the Superintendent, or other person who files an application for enrollment on behalf of another person.

§ 43a.2 Purpose.

The regulations in this part are to govern the compilation of a roll of members of the Pyramid Lake Paiute Tribe eligible to share in the distribution of judgment funds awarded the Pyramid Lake Paiute Indians by the Indian Claims Commission in Docket No. 87-B.

§ 43a.3 Qualifications for enrollment and deadline for filing.

The roll shall contain the names of persons living on June 12, 1979, who meet the following requirements for enrollment:

(a) The criteria specified in Article II, Section 1 of the Pyramid Lake constitution which provides that the membership of the tribe shall consist of:

(1) All persons of Indian blood whose names appear on the official

roll of the Pyramid Lake Reservation as of January 1, 1935

(2) All children born to any member of the Pyramid Lake Paiute Tribe who is a resident of the reservation at the time of the birth of said children; or

(b) They are adopted into membership by the tribe pursuant to any ordinance adopted by the tribe in accordance with Article II, Section 2 of the constitution, and approved by the Secretary.

(c) They file an application with the Superintendent, Western Nevada Agency, Stewart, Nevada 89437. Applications must be received by the Superintendent no later than close of business on July 15, 1980. Applications received after that date will be rejected for inclusion on the roll being prepared for failure to file on time regardless of whether applicant otherwise meets the requirements for enrollment. However, persons rejected for late-filed applications may be considered for enrollment as members of the tribe for future purposes. If the filing deadline falls on a Saturday, Sunday, legal holiday or other nonbusiness day, the deadline will be the next working day thereafter.

§ 43a.4 Application forms.

(a) Application forms to be filed by applicants for enrollment will be furnished by the Superintendent, or other designated persons, upon written or oral request. Each person furnishing application forms shall keep a record of the names of individuals to whom applications are given, as well as the control numbers of the forms and the date furnished. Instructions for completing and filing applications shall be furnished with each form. The form shall indicate prominently the deadline for filing applications.

(b) Among other information, each application shall contain:

(1) Certification as to whether application is for a natural child or an adopted child of the parent through whom eligibility is claimed.

(2) If the application is filed by a sponsor, the name, and address of sponsor and relationship to applicant.

(3) A control number for the purpose of keeping a record of applications furnished interested individuals.

§ 43a.5 Filing of applications.

(a) Any person who desires to be enrolled and who believes he meets the requirements for enrollment specified in the plan and the regulations in this part must file or have filed for him a completed application form with the Superintendent or other designated person on or before the deadline specified in § 43a.3.

(b) Written application forms for minors, mentally incompetent persons or other persons in need of assistance, for members of the Armed Services or other service of the U.S. Government and/or members of their families stationed in Alaska, Hawaii, or elsewhere outside the continental United States, or for a person who died after June 12, 1979, may be filed by the sponsor on or before the deadline.[1]

(c) Every applicant or sponsor shall furnish the applicant's mailing address on the application. Thereafter, he shall promptly notify the Superintendent of any change in address, giving appropriate identification of the application, otherwise the address as stated shall be acceptable as the proper address.

§ 43a.6 Burden of proof.

The burden of proof of eligibility for enrollment rests upon the applicant. Documentary evidence such as birth certificates, death certificates, baptismal records, copies of probate findings or affidavits must be used to support claims for enrollment. Records of the Bureau of Indian Affairs may also be used to establish eligibility.

§ 43a.7 Action by the tribe.

All applications received by the Superintendent shall be submitted to the Tribal Enrollment Committee for review and recommendation. The Tribal Enrollment Committee shall review all applications and present their written recommendations at the next regularly scheduled Tribal Council meeting after receipt of the applications. The Tribal Council, by resolution, will make their decision. The decision shall state the reason(s) for ap-

[1] Criminal penalties are provided by statute for knowingly filing false information in such settlements, 18 U.S.C. 1001.

proval or rejection of the applicant for tribal membership. Within five (5) working days after the Tribal Council's action, the applications shall be returned to the Superintendent with the decision and any additional evidence used in determining eligibility for tribal membership.

§ 43a.8 Action by the Superintendent.

(a) The Superintendent shall consider each application, all documentation, and the Tribal Council's decision. The Superintendent shall accept the decision of the Tribal Council unless the decision is clearly erroneous. If the Superintendent overrules the Tribal Council's decision, he shall notify the Tribal Council of his actions and the reasons therefore. The determination of the Superintendent shall only affect the applicant's eligibility to share in the distribution of the judgment funds. Upon determining an applicant's eligibility, the Superintendent shall notify the applicant or sponsor, as applicable, in writing of his decision. If the decision is favorable, the name of the applicant shall be placed on the roll. If the Superintendent decides the applicant is not eligible, he shall notify the applicant or sponsor, as applicable, in writing by certified mail, to be received by the addressee only, return receipt requested, and shall explain fully the reasons for rejection and of the right to appeal to the Secretary. If correspondence is sent out of the United States, it may be necessary to use registered mail. If an individual files applications on behalf of more than one person, one notice of eligibility or rejection may be addressed to the person who filed the applications. However, said notice must list the name of each person involved.

(b) A notice of eligibility or rejection is considered to have been made on the date (1) of delivery indicated on the return receipt, (2) of acknowledgment of receipt, (3) of personal delivery, or (4) of the return by the post office of an undelivered certified or registered letter.

(c) In all cases where an applicant is represented by an attorney, such attorney will be recognized as fully controlling the same on behalf of his client; and service of any document relating to the application shall be considered to be service on the applicant he represents. Where an applicant is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

(d) To avoid hardship or gross injustice, the Superintendent may waive technical deficiencies in applications or other submissions. Failure to file by the deadline does not constitute a technical deficiency.

§ 43a.9 Appeals.

Appeals from rejected applications must be in writing and must be filed pursuant to Part 42 of this subchapter, a copy of which shall be furnished with each notice of rejection.

§ 43a.10 Decision of the Secretary on appeals.

The decision of the Secretary on an appeal shall be final and conclusive, and written notice of the decision shall be given to the applicant or sponsor. When so directed by the Secretary, the Assistant Secretary shall cause to be entered on the roll the name of any person whose appeal has been sustained.

§ 43a.11 Preparation of roll.

The staff officer shall prepare a minimum of 5 copies of the roll of those persons determined to be eligible for enrollment, including those whose appeals were sustained. In addition to other information which may be shown, the complete roll shall contain for each person an identification number, name, address, sex, date of birth, date of death (if applicable), degree of tribal blood, and the authority for enrollment.

§ 43a.12 Certification and approval of the roll.

A certificate shall be attached to the roll by the Superintendent certifying that to the best of his knowledge and belief the roll contains only the names of those persons who were determined to meet the requirements for enrollment. The Director shall approve the roll.

§ 43a.13 Special instructions.

To facilitate the work of the Superintendent the Assistant Secretary may issue special instructions not inconsistent with the regulations in this part.

Part 43b–43f—[Reserved]

PART 43g—PREPARATION OF A ROLL TO SERVE AS THE BASIS FOR THE DISTRIBUTION OF JUDGMENT FUNDS AWARDED TO THE PEMBINA BAND OF CHIPPEWA INDIANS

Sec.

43g.1 Definitions.
43g.2 Purpose.
43g.3 Qualifications for enrollment.
43g.4 Application forms.
43g.5 Filing of applications and deadline for filing.
43g.6 Burden of proof.
43g.7 Action by the Director.
43g.8 Appeals.
43g.9 Preparation of roll.
43g.10 Certification and approval of roll.
43g.11 Apportioning and distributing judgment funds.
43g.12 Establishment of Pembina Descendants Committee, Turtle Mountain.
43g.13 Tribal use of judgment funds.
43g.14 Special instructions.

AUTHORITY: R.S. 161; 5 U.S.C. 301, R.S. 463 and 465; 25 U.S.C. 2 and 9, sec. 8, 85 Stat. 158; 25 U.S.C. 1248.

SOURCE: 36 FR 20226, Oct. 19, 1971, unless otherwise noted.

§ 43g.1 Definitions.

(a) "Act" means the Act of Congress approved July 29, 1971 (85 Stat. 158), which authorizes and directs the Secretary to prepare a roll of the Pembina Band of Chippewa Indians and to distribute certain judgment funds to such persons.

(b) "Secretary" means the Secretary of the Interior or his authorized representative acting under delegated authority.

(c) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative acting under delegated authority.

(d) "Director" means the Area Director, Aberdeen Area Office, Bureau of Indian Affairs, or his authorized representative acting under delegated authority.

(e) "Lineal descendant" means a person in direct line of descent, as child, grandchild, great-grandchild, etc. It does not include collateral relationships, examples of which are brother, sister, nephew, niece, cousin, etc.

(f) "Living" means born on or before and living on July 29, 1971.

(g) "Sponsor" means a person who filed an application for enrollment on behalf of another person; e.g., parent, recognized guardian, next friend, next of kin, spouse, executor, or administrator of estate, or other person.

§ 43g.2 Purpose.

(a) The regulations in this Part 43g are to govern the compilation of a roll of persons who meet the enrollment requirements specified in section 2 of the Act to serve as a basis for and the distribution of certain judgment funds awarded the Pembina Band of Chippewa Indians.

§ 43g.3 Qualifications for enrollment.

The roll shall contain the names of persons who:

(a) File an application for enrollment within the time specified in § 43g.5, and

(b) Were born on or prior to and were living on the date of the Act, and

(c) Are lineal descendants of members of the Pembina Band as it was constituted in 1863, except that persons in the following categories shall not be so enrolled:

(1) Those who are not citizens of the United States;

(2) Those who are members of the Red Lake Band of Chippewa Indians; and

(3) Those who participated in the Mississippi, Pillager, and Lake Winnibigoshish Chippewa Band awards under the provisions of the Act of September 27, 1967 (81 Stat. 230).

§ 43g.4 Application forms.

(a) Application forms will be furnished by the Director or other designated persons upon written or verbal request. Each person furnishing application forms shall keep a record of the names of the individuals to whom ap-

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plications are given, as well as the number of forms and the dates furnished.

(b) Among other information applications shall contain:

(1) The deadline for filing the application with the Director.

(2) If the application is filed by a sponsor, the name, address and relationship of sponsor to the applicant.

(c) An application filed by a person who has never been enrolled must contain a certification that the applicant is a relative by blood of the person or persons through whom eligibility for enrollment is claimed.

(d) Instructions for completing and filing application forms shall be furnished with each form.

§ 43g.5 Filing of applications and deadline for filing.

(a) Any person who desires to be enrolled pursuant to the Act must file, or have filed in his behalf, a completed application form with the Director, Bureau of Indian Affairs, Aberdeen Area Office, 820 South Main Street, Aberdeen, SD 57401. Applications must be postmarked no later than midnight on June 27, 1972.

[37 FR 6291, Mar. 28, 1972]

§ 43g.6 Burden of proof.

(a) The burden of proof rests upon the applicant to establish his eligibility for enrollment. Documentary evidence such as birth certificates, death certificates, marriage certificates, baptismal and other church records, copies of probate findings or affidavits may be used to support the claim for enrollment. Records of the Bureau of Indian Affairs may also be used to establish eligibility.

§ 43g.7 Action by the Director.

(a) The Director shall consider each application. Upon making a determination, the Director shall notify in writing the applicant or sponsor of his decision. If such decision is favorable, the name of the applicant shall be placed on the roll. If the decision is adverse, the notification to the applicant or sponsor shall be made by certified mail, to be received by addressee only, return receipt requested, and shall contain a full explanation of the reasons therefor, and of the right to appeal to the Secretary. If an individual files applications on behalf of more than one person, one notice of eligibility or rejection may be addressed to the person who filed the applications. However, said notice must list the names of each person involved.

(b) To avoid hardship or gross injustice, the Director may waive technical deficiencies in applications or other submissions.

§ 43g.8 Appeals.

(a) Appeals from rejected applications must be in writing and filed pursuant to Part 42 of this subchapter, a copy of which will be furnished with the notice of each rejection.

§ 43g.9 Preparation of roll.

(a) In developing the roll of Pembina descendants the Secretary shall determine which enrollees are members of the Minnesota Chippewa, the Turtle Mountain Band of Chippewas of North Dakota, or the Chippewa-Cree Tribe of Montana.

(b) The Director shall prepare the roll of persons determined to be eligible for enrollment. In addition to other information which may be shown, the completed roll shall contain for each person a roll number, name, address, sex, date of birth, and in the remarks column the name and relationship of the ancestor through whom eligibility is claimed.

§ 43g.10 Certification and approval of roll.

(a) A certificate shall be attached to the roll by the Director certifying that to the best of his knowledge and belief the roll contains only the names of those persons who were determined to meet the requirements for enrollment. The Commissioner shall approve the roll.

§ 43g.11 Apportioning and distributing judgment funds.

(a) Subsequent to the establishment of the descendancy roll the Secretary shall apportion funds to the three cited tribes on the basis of the numbers of enrolled descendants having membership with these tribes.

(b) The remaining funds shall be distributed in equal shares to those enrolled descendants who are not members of the three cited tribes.

§ 43g.12 Establishment of Pembina Descendants Committee, Turtle Mountain.

(a) The Secretary shall call a meeting of known Pembina descendants who are affiliated with the Turtle Mountain Band for the purpose of electing a Pembina Descendants Committee to work in concert with the tribal governing body for the purpose of making recommendations to the Secretary. Notice of the meeting will be given in local news media and posted at places frequented by the members of the band.

(b) A temporary chairman will be elected and will preside at the meeting. He shall entertain nominations for committee members from the floor. Committee members will be elected by a majority vote of those attending the meeting and casting ballots.

(c) The Superintendent shall furnish the ballots and following the election shall certify the results of the election reflecting the sentiments of the majority of the Pembina descendants attending the meeting.

§ 43g.13 Tribal use of judgment funds.

(a) The funds apportioned to the Minnesota Chippewa Tribe, the Turtle Mountain Band, and the Chippewa-Cree Tribe may be advanced, expended, invested, or reinvested for any purpose authorized by the respective tribal governing bodies and approved by the Secretary: *Provided,* That the governing body of the Minnesota Chippewa Tribe shall act in concert with the General Council of the Pembina Band of Chippewa Indians of the White Earth Reservation for the purpose of making recommendations to the Secretary; *And provided further,* That the Turtle Mountain tribal governing body shall be required to work in concert with the Pembina Descendants Committee elected as provided in § 43g.12 for the purpose of making recommendations to the Secretary and only those members of the three cited tribes who are enrolled as Pembina descendants under the provisions of this Act shall be permitted to share in any per capita distribution of the funds accruing to the tribes.

§ 43g.14 Special instructions.

(a) To facilitate the work of the Director, the Commissioner may issue special instructions not inconsistent with the regulations in this Part 43g.

PART 43h—PREPARATION OF A ROLL OF ALASKA NATIVES

Sec.

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43h.5 Enrollment in a 13th region.
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43h.9 Preparation, certification, approval and amendment of the roll.
43h.10 Establishment of a 13th region.
43h.11 Metlakatla Community members.
43h.12 Special instructions.
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43h.14 Deadlines for amending enrollment applications.
43h.15 Disenrollment.

AUTHORITY: 5 U.S.C. 301; R.S. 463 and 465, 25 U.S.C. 2 and 9; and sec. 25, 85 Stat. 688, 715.

SOURCE: 37 FR 5615, Mar. 17, 1972, unless otherwise noted.

§ 43h.1 Definitions.

(a) "Act" means the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, Public Law 92-203, as amended and supplemented by the Act of January 2, 1976, 89 Stat. 1145, Public Law 94-204.

(b) "Secretary" means the Secretary of the Interior or his authorized representative.

(c) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(d) "Area Director" means the Area Director, Bureau of Indian Affairs, Juneau, Alaska, or his authorized representative.

(e) "Coordinator" means the head of the Enrollment Coordinating Office, Pouch 7-1971, Anchorage, Alaska 99501, having the responsibility for coordinating all activities regarding preparation of the roll.

(f) "Roll" means the roll of Alaska Natives prepared pursuant to the Act.

(g) "Native" means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group.

(h) "Village" means any tribe, band, clan, group, village, community, or association in Alaska listed in sections 11 and 16 of the Act, or which meets the requirements of the Act, and which the Secretary determines was, on the 1970 census enumeration date (April 1, 1970), composed of 25 or more Natives.

(i) "Native group" means any tribe, band, clan, village, community, or village association of Natives in Alaska composed of less than 25 Natives, who comprise a majority of the residents of the locality.

(j) "Region" means the geographic area covered by the operation of one of the 12 existing Native associations recognized in section 7(a) of the Act, or its successor regional corporation, and, includes the 13th region.

(k) "Permanent residence" means the place of domicile on April 1, 1970, which is the location of the permanent place of abode intended by the applicant to be his actual home. It is the center of the Native family life of the applicant to which he has the intent to return when absent from that place. A region or village may be the permanent residence of an applicant on April 1, 1970, even though he was not actually living there on that date, if he has continued to intend that place to be his home.

(l) "Regional Solicitor" means the officer in charge of the Anchorage Region of the Office of the Solicitor, Department of the Interior.

(m) "Sponsor" means a parent, recognized guardian, next friend, next of kin, spouse, executor, or administrator of estate, the Area Director or other person who files an application for enrollment on behalf of another person. It does not include an enumerator.

(n) "Enumerator" means a person officially engaged in gathering for the Secretary data and information concerning eligibility of individual applicants for enrollment.

(o) "Adopted person" means a person whose natural parents' parental rights have been terminated by court order and given to others to exercise.

[37 FR 5615, Mar. 17, 1972; 37 FR 7204, Apr. 12, 1972, as amended at 41 FR 32421, Aug. 3, 1976]

§ 43h.2 Purpose.

The regulations in this part are to govern exclusively the preparation of a roll of Alaska Natives pursuant to section 5 of the Act. The provisions of Parts 2 and 42 of this chapter shall not be applicable to enrollment procedures and appeals provided for in this Part 43h.

§ 43h.3 Requirements for enrollment.

The roll shall consist of the names of all persons who meet the definition of Native and who were born on or before and were living on December 18, 1971.

§ 43h.4 Enrollment in regions.

(a) Permanent residents of Alaska: A Native permanently residing in Alaska on April 1, 1970, shall be enrolled in the region and village or other place in which he or she was a permanent resident on that date.

(b) Nonresidents of Alaska: A Native who is 18 years of age or older at the time of filing his or her application for enrollment and who, on April 1, 1970 was not a permanent resident of one of the regions in Alaska shall be enrolled according to the following order of priority:

(1) In the 13th region, if he or she so elects, or

(2) In the region where he or she resided on April 1, 1970, if he or she had resided there without substantial interruption for 2 or more years, or

(3) In the region where he or she previously resided for an aggregate of 10 years or more, or

(4) In the region where he or she was born, or

(5) In the region from which an ancestor came.

(c) A Native may be enrolled in a different region when necessary to avoid enrolling members of the same family (i.e., parents and children) in different regions or otherwise avoid hardship.

(d) Eligible children born on or after April 2, 1970, and on or before December 18, 1971, shall be enrolled in the region in which one of their parents is enrolled.

[37 FR 5615, Mar. 17, 1972, as amended at 41 FR 32422, Aug. 3, 1976]

§ 43h.5 Enrollment in a 13th region.

A Native eligible for enrollment who is 18 years of age or older and who, on April 1, 1970, was not a permanent resident of Alaska shall on the date he or she files an application for enrollment, elect whether to be enrolled in the 13th region or in the region determined pursuant to § 43h.4(b). Such election shall apply to all dependent members of his or her household who are less than 18 years of age on the date of such election, but shall not affect the enrollment of anyone else. Eligible Natives, entitled to make such an election but who abstain from indicating their preference when they file their applications, shall be enrolled in the appropriate region in Alaska pursuant to paragraphs (2) through (5) of § 43h.4(b).

[41 FR 32422, Aug. 3, 1976]

§ 43h.6 Applications for enrollment.

(a) All applications for enrollment shall be in writing on forms provided by the Bureau of Indian Affairs and shall be signed by or for the head of each household, spouse, and/or the dependent members of his or her household under 18 years of age. A separate application shall be completed and signed by or for other members of a household 18 years of age or older.

(b) Applications for adopted children or other minors not living with their parents, mentally incompetent persons, members of the Armed Services and/or any eligible members of their immediate families, stationed outside the Continental United States, or persons who have died since December 18, 1971, may be filed by a sponsor on or before the deadline specified in this section. Applications for adopted children should be supported by copies of decrees of adoption, if available. Applications for deceased persons should be supported by copy of death certificate or other document which establishes the date of death.

(c) The application shall contain, among other information, the applicant's Social Security number, name, address, sex, date, and place of birth, degree of Alaskan Native Blood, permanent residence as of April 1, 1970, the village from which his ancestors came, and for a nonresident of Alaska, his election regarding enrollment in a 13th region. Social Security numbers and cards will be issued by the Social Security Administration to those persons who do not have them.

(d) Completed applications must be submitted to the Enrollment Coordinating Office (Kaloa Building, 16th and C Streets), Pouch 7-1971, Anchorage, Alaska 99510, within one year from January 2, 1976.

(e) Residents of Alaska: An Enumerator shall be assigned temporarily to each of the 12 Regional Corporations in Alaska to assist in the completion and submission of applications. Upon the request of a Village Corporation, provided there are five or more applications to be filed, an enumerator shall be sent to the village to assist in the completion and submission of applications. They shall also visit centers in urban areas to furnish assistance in the completion and submission of applications. Persons who are missed by the enumerators may apply to the Coordinating Office by mail or in person.

(f) Nonresident of Alaska: (1) Enumerators shall be assigned or detailed temporarily to the following places to assist in completion and submission of applications by persons residing outside the State of Alaska:

(i) One enumerator to The 13th Regional Corporation;

(ii) One enumerator to the Bureau of Indian Affairs Seattle Liaison Office;

(iii) Enumerators in various urban localities where there is a heavy concentration of Natives.

(2) Persons who are missed by an enumerator or who reside in an area not served by an enumerator may apply to the Enrollment Coordinating Office by mail or in person.

(g) Notice to regions and village corporations: Each regional corporation shall be notified of the name, date, and place of birth, and claimed residence of every applicant for enrollment, including dependents within the region. Each village corporation shall be notified of the name, date, and place of birth, and claimed residence of every applicant for enrollment, including dependents, within the village. The provisions of this section shall not be applied to the application of an adopted person.

(h) Use of address of record: All notices of action shall be sent to the most current name and address of record in an applicant's file. It is the responsibility of the applicant to advise the Enrollment Coordinating Office of any change of name or address.

[41 FR 32422, Aug. 3, 1976]

§ 43h.7 Determination of eligibility.

(a) Determinations of eligibility shall be made by the Coordinator on the basis of information set forth in the application, records of the Bureau of Indian Affairs, village and tribal rolls and such other evidence as is available, including the submissions, if any, of the regional or village corporations.

(b) Each applicant shall be notified in writing of the decision. If such decision is favorable, the name of the applicant shall be placed on the roll. If the decision is adverse as to enrollment or as to the region or village in which enrolled, the applicant or sponsor shall be notified by certified mail, return receipt requested, of the decision together with the reasons for the decision and of his right of appeal.

(c) Each region shall be notified by certified mail, return receipt requested, of the Coordinator's decisions with respect to persons enrolled or denial of enrollment with that region. Each village corporation shall be notified by certified mail, return receipt requested, of the Coordinator's decisions with respect to persons enrolled or denied enrollment in that village. Except with respect to adopted persons, the regional and village corporations shall be further notified of their rights to appeal such decisions and the reasons for acceptance or rejection of the enrollment application.

[41 FR 32422, Aug. 3, 1976]

§ 43h.8 Appeals.

(a) Appeals by individuals from adverse decisions must be in writing and filed with the Enrollment Coordinating Office not later than 30 days after the date of receipt by certified or registered mail, return receipt requested, of the notice of the adverse decision or not later than 37 days after the date of mailing of such notice where certified or registered mail service to the individual is not available or where any notice is returned to the Coordinator in accordance with postal regulations. Appeals by regional and village corporations from the Coordinator's decisions must be in writing and filed with the Coordinating Office not later than 30 days after receipt of the notice sent by certified or registered mail, return receipt requested, or not later than 37 days after the date of mailing of such notice where certified or registered mail service is not available or where any notice is returned to the Coordinator in accordance with postal regulations. A decision of the Coordinator on the application of an adopted person, as defined in § 43h.1(o), will not be subject to appeals by regional or village corporations, leaving such decisions subject to appeal only by the adopted person or his or her guardian or sponsor, if such adopted person is a minor.

(b) Each appeal from a decision on an application for enrollment shall be by petition, which shall state the bases and reasons for the appeal, and which shall include or be accompanied by all arguments, briefs, records, or other evidence which the appellant urges as grounds for reversal. No additional presentation will be allowed except

upon a showing satisfactory to the Regional Solicitor.

(c) A copy of each appeal petition and its supporting documents filed by an applicant shall be served by the Coordinator upon the regional and/or village corporation whose region or village names appear on the decision appealed from. A copy of each appeal petition and its supporting documents filed by a regional corporation shall be served by the Coordinator upon the applicant for enrollment and upon the village corporation whose village name appears on the decision appealed from. A copy of each appeal petition and the supporting documents filed by a village corporation shall be served by the Coordinator upon the applicant for enrollment and upon the region corporation for the region whose name appears on the decision appealed from.

(d) Service as provided for in paragraph (c) of this section shall be made by the Coordinator at the time an appeal is filed with the Enrollment Coordinating Office by delivering a copy of the appeal petition and supporting documents either in person or by certified or registered mail, return receipt requested. If certified or registered mail service to an addressee is not available, service may be made on that addressee by sending to that addressee a copy of the appeal petition and supporting documents by first class mail which is neither certified nor registered. Service will be considered to have been made at the time: (1) Of acknowledgment; (2) of personal service; (3) of delivery by certified or registered mail, return receipt requested; (4) seven (7) days after the date of mailing by first class mail which is neither certified nor registered; or (5) seven (7) days after the date of mailing by certified or registered mail, return receipt requested, which is returned by the Postal Service undelivered. Within 15 days of filing the appeal petition with the Enrollment Coordinating Office, proof of service must be furnished to the Regional Solicitor by the Coordinator. This proof may be made by informing the Regional Solicitor in writing of the names of the parties served; whether service was made personally or by certified, registered, or first class mail which was neither certified nor registered; and the address, if mailed, to which copies of the appeal petition and supporting documents were sent.

(e) A party served with a copy of an appeal petition and supporting documents shall have 20 days from the date of service in which to file written views on the appeal with the Regional Solicitor.

(f) Upon receipt of an appeal petition, the Coordinator will forward the petition, with all records pertaining thereto, to the Regional Solicitor. Determination on appeals will be made by the Regional Solicitor on behalf of the Secretary and shall be final. The applicant and the appropriate village and regional corporation shall be notified in writing of the determination of the Regional Solicitor.

[41 FR 32422, Aug. 3, 1976]

§ 43h.9 Preparation, certification, approval and amendment of the roll.

(a) The Alaska Native Roll shall be prepared by the Enrollment Coordinating Office, and shall contain for each enrollee his or her name, Social Security number, last known address, sex, date of birth, degree of Alaska Native blood or other basis for determining eligibility, permanent residence as of April 1, 1970, and the village and/or region in which he or she is enrolled.

(b) The roll approved December 17, 1973, subject to appeals and the legal determinations shall be maintained by the Enrollment Coordinating Office, and shall be amended from time to time as necessary to correct errors to show changes in names, addresses, place of enrollment, or other information entitled to recognition, to reflect determinations of eligibility and ineligibility, and for such other purposes as may be required.

[41 FR 32423, Aug. 3, 1976]

§ 43h.10 Establishment of a 13th Region.

(a) Effective October 1, 1975, by Secretarial Order No. 2980, there was established a 13th region for the benefit of Alaska Natives who are not permanent residents of Alaska and who elected to be enrolled therein. Order

No. 2980 was issued pursuant to an order entered on December 30, 1974, in the consolidated cases entitled *Alaska Native Association of Oregon, et al.*, v. *Morton, et al.*, and *Alaska Federation of Natives International, et al.*, v. *Morton, et al.*, Civil Nos. 2133-73 and 2141-73, in the United States District Court for the District of Columbia, and as provided by Section 7(c) of the Act.

(b) Nonresidents of Alaska who are eligible for enrollment pursuant to applications submitted under authority of Section 1 of the Act of January 2, 1976, 89 Stat. 1145, Pub. L. 94-204, may be enrolled in the 13th region or in the appropriate region in Alaska as provided in § 43h.4.

[41 FR 32423, Aug. 3, 1976]

§ 43h.11 Metlakatla Community members.

No person who was enrolled in the Metlakatla Indian Community of the Annette Islands Reserve as of April 1, 1970, shall be eligible for enrollment under this Part.

[41 FR 32423, Aug. 3, 1976]

§ 43h.12 Special instructions.

To facilitate the work of the Area Director, the Commissioner may issue special instructions not inconsistent with the regulations in this part.

§ 43h.13 [Reserved]

§ 43h.14 Deadlines for amending enrollment applications.

Amendments to enrollment applications or amended applications filed pursuant to the Act of January 2, 1976, will not be considered originally or on appeal unless filed (received by the Enrollment Coordinating Office) on or before April 2, 1977. All such amendments or amended applications received subsequent to April 2, 1977, will be returned to the applicant without action.

[41 FR 32423, Aug. 3, 1976]

§ 43h.15 Disenrollment.

(a) Where it appears to the coordinator, based upon review of records within the office of the Area Director and the office of the Enrollment Coordinator, or based upon information otherwise available to him, that a person who has been placed on the roll of Alaska Natives may be ineligible under the provisions of section 5, Alaska Native Claims Settlement Act and this part for inclusion on the roll, the coordinator shall cause to be made such investigation as is necessary to determine whether the person is eligible to be on the roll of Alaska Natives.

(b) Where the coordinator concludes that the enrollment of a person as an Alaska Native was improper under the provisions of section 5, Alaska Native Claims Settlement Act and this part he shall initiate a contest by filing a complaint with the Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203. The procedures governing disenrollment contests are contained in 43 CFR, Part 4, Subpart K.

(c) With respect to any enrollment pursuant to section 5 of the Alaska Native Claims Settlement Act of 1971, Pub. L. 92-203, no contest may be initiated by the coordinator after July 31, 1977. With respect to any enrollment pursuant to the Alaska Native Claims Settlement Act as amended on January 2, 1976 (Pub. L. 94-204), to provide for the late enrollment of certain Natives, no contest may be initiated by the coordinator after January 2, 1978.

(d) All disenrollment contests which have been filed, pursuant to this part as of the date of promulgation of these regulations shall be reviewed by the Coordinator together with the Regional Solicitor.

(e) Following the review of disenrollment contests prescribed by § 43h.15(d), the Coordinator and the Regional Solicitor shall continue to contest an individual's enrollment *only* where the complaint already filed states one of the following as grounds for that individual's disenrollment: That such person died before or was born after December 18, 1971, or was enrolled in the Metlakatla Indian Community as of April 1, 1970, or has no Native ancestry, or is not a United States citizen either by birth or naturalization. Except that, if the complaint states "less than ¼ Native blood" as the grounds for disenrollment, but the contestee in fact, has *no* Native ancestry, the contest may be

resumed and the complaint amended to read "no Native ancestry" as the grounds for disenrollment. Furthermore, if the grounds currently stated or other information included on the face of the complaint and the statement of reasons attached thereto clearly indicate that a person has been incorrectly placed on the roll as a result of that person's fraudulent conduct (within the meaning of 18 U.S.C. 1001), the contest may be resumed and the complaint amended to state fraudulent conduct as the grounds for disenrollment.

(f) The Coordinator and the Regional Solicitor shall proceed immediately to withdraw or dismiss all other pending enrollment complaints with notices to all parties, except that any contestee whose original enrollment was protested by a regional or village corporation at the time of the contestee's enrollment shall provide to the Coordinator an affidavit from the protesting corporation as to the contestee's eligibility before the Coordinator shall withdraw the complaint against such persons. The Coordinator shall immediately notify all such contestees who were originally protested by a village or regional corporation, that they must provide such an affidavit by October 1, 1978, or the disenrollment contest against them will be resumed, regardless of whether the grounds fall within those specified in paragraph (e) of this section.

(g) In any case where the Coordinator and the Regional Solicitor resumes a disenrollment contest by amending the complaint to state no Native ancestry or fraudulent conduct as the grounds, and where a hearing was already held on the original disenrollment complaint, the Administrative Law Judge may order a second hearing if he or she feels such hearing is necessary to acquire better evidence on the amended grounds for disenrollment.

(h) The Regional Solicitor and Coordinator shall complete all reviews called for by § 43h.15(d) no later than October 1, 1978.

(i) For purposes of § 43h.15(e) the Coordinator and Regional Solicitor shall proceed against an individual on grounds that he is not a United States citizen only after they have investigated and satisfied themselves that the contestee has not been naturalized in any state and that the contestee is not a United States citizen by birth or in accordance with the appropriate immigration and naturalization laws. A prior ruling by the Regional Solicitor that an individual was a United States citizen shall be conclusive and the disenrollment complaint shall be dismissed or withdrawn immediately.

[41 FR 13352, Mar. 30, 1976, as amended at 43 FR 26442, June 20, 1978; 43 FR 29115, July 6, 1978]

PARTS 43i–43j—[RESERVED]

PART 43k—REVISION OF THE FINAL ROLL OF THE MENOMINEE TRIBE OF WISCONSIN

§ 43k.14 Current membership roll.

The membership roll of the tribe shall be kept current until such time as the tribe assumes responsibility for the roll by striking therefrom the names of persons who have relinquished in writing their membership in the tribe and of deceased persons upon receipt of a death certificate or other evidence of death acceptable to the staff, and by adding thereto the names of children who meet the qualifications for membership in the tribe set forth in this part.

(Sec. 7, 87 Stat. 773)

[43 FR 40457, Sept. 12, 1978]

PART 43*l*—PREPARATION OF A ROLL TO SERVE AS THE BASIS FOR THE DISTRIBUTION OF JUDGMENT FUNDS AWARDED CERTAIN WARM SPRINGS INDIANS

Sec.

43*l*.1 Definitions.
43*l*.2 Purpose.
43*l*.3 Qualifications for enrollment.
43*l*.4 Preparation, publication and display of proposed roll.
43*l*.5 Appeals.
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43*l*.8 Action by the Director.
43*l*.9 Decision of the Commissioner on appeals.
43*l*.10 Preparation and approval of roll.
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AUTHORITY: 5 U.S.C. sec. 301, R.S. secs. 463 and 465; 25 U.S.C. secs. 2 and 9, and 87 Stat. 466.

SOURCE: 40 FR 36324, Aug. 20, 1975, unless otherwise noted.

§ 43l.1 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(c) "Director" means the Director, Portland Area Office, Bureau of Indian Affairs, or his authorized representative.

(d) "Living" means born on or prior to and living on February 18, 1975.

(e) "Plan" means the plan for the use and distribution of the Warm Springs judgment funds which was prepared pursuant to the Act of October 19, 1973 (87 Stat. 466), and which became effective February 18, 1975.

§ 43l.2 Purpose.

The regulations in this part are to govern the compilation of a roll of certain members of the Confederated Tribes of the Warm Springs Reservation living on February 18, 1975, which roll shall be used for the distribution of the judgment awarded the Warm Springs Tribes by the Indian Claims Commission in Docket 198.

§ 43l.3 Qualifications for enrollment.

All persons who meet the following requirements for eligibility shall be entitled to be enrolled to share in the distribution of the judgment funds awarded the Warm Springs Tribe in Indian Claims Commission Docket 198:

(a) They were born prior to and living on February 18, 1975.

(b) They are enrolled members of the Warm Springs Tribes and their names appear on the March 1, 1975, tribal membership roll with the specification that the names of those persons who died subsequent to February 18, 1975, but whose names appeared on the February 1, 1975, roll shall be added to the roll being prepared.

(c) They have not shared in the distribution of the judgment awarded to the Malheur Paiutes under the provisions of the Act of August 20, 1964 (78 Stat. 563), or have not received per capita payments from any other judgments of the Indian Claims Commission and have not received payments under the provisions of the Alaska Native Settlement Act of December 18, 1971 (85 Stat. 688).

§ 43l.4 Preparation, publication and display of proposed roll.

The Director shall prepare, with the assistance of the Warm Springs Tribes, a proposed roll of members of the tribes who meet the requirements specified in § 43l.3. Such roll shall contain for each person a roll number, name, sex, date of birth, date of death if applicable, tribal derivation and degree of blood of each tribe. The proposed roll shall be placed on public display for 30 days at the Warm Springs Agency, community building, local post offices, Portland Area Office and other Bureau offices in the Washington-Oregon area.

§ 43l.5 Appeals.

Any person who believes he is eligible for enrollment to share in the judgment funds, or a representative of such person, may within 30 days from the date of posting file an appeal with the Secretary contesting the inclusion or omission of the name of any person on or from such proposed roll in accordance with the procedures provided in this Part.

§ 43l.6 Filing appeals.

The appeal shall be in writing addressed to the Secretary but mailed to the Director and must be received by the Director before the close of business on the thirtieth (30th) day after the posting of the proposed roll.

§ 43l.7 Supporting evidence.

The appeal may be accompanied by any supporting evidence, relied upon as a basis for the appeal, including copies of Bureau or tribal records having a direct bearing on the appellant's contentions. The appellant may furnish affidavits from persons having personal knowledge of the facts at issue. The appellant may request additional time to submit supporting evidence. A period considered reasonable for such submissions may be granted

by the official receiving the appeal. The burden of proof of establishing the improper inclusion or omission of any name is on the appellant.

§ 43l.8 Action by the Director.

If after review of the evidence the Director is satisfied that the omission of any name is improper and eligibility has been established, the appellant shall be so notified in writing and his name entered on the roll. If the Director determines the appellant is ineligible or inclusion of the name is improper, he shall so notify the appellant and shall forward the appeal, together with the complete record and his recommendation thereon, to the Commissioner for final determination.

§ 43l.9 Decision of the Commissioner on appeals.

The Commissioner shall consider the record as presented, together with such additional information as he may consider pertinent. Any such additional information shall be specifically identified in his decision. The decision of the Commissioner on an appeal shall be final and conclusive and written notice of the decision shall be given the appellant.

§ 43l.10 Preparation and approval of roll.

The completed payment roll shall contain the same information as the proposed roll, except for such changes as may be required by the decisions on all appeals taken from the proposed roll. The Director shall approve the roll.

§ 43l.11 Special instructions.

To facilitate the work of the Director, the Commissioner may issue special instructions not inconsistent with the regulations in this Part 43l.

PART 43m—[RESERVED]

PART 43n—PREPARATION OF A ROLL OF PERSONS OF GRAND RIVER OTTAWA INDIAN BLOOD TO BE USED AS THE BASIS TO DISTRIBUTE JUDGMENT FUNDS

Sec.

43n.1 Definitions.
43n.2 Purpose.
43n.3 Qualifications for enrollment.
43n.4 Filing of applications and deadline for filing.
43n.5 Burden of proof.
43n.6 Action by the Superintendent.
43n.7 Appeals.
43n.8 Preparation of the roll.
43n.9 Certification and approval of the roll.
43n.10 Special instructions.

AUTHORITY: 90 Stat. 2503.

SOURCE: 42 FR 26652, May 25, 1977, unless otherwise noted.

§ 43n.1 Definitions.

(a) "Act" means the Act of October 18, 1976 (90 Stat. 2503), which directs the Secretary of the Interior to prepare the roll of the Grand River Band of Ottawa Indians.

(b) "Secretary" means the Secretary of the Interior or his authorized representative.

(c) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(d) "Area Director" means the Area Director, Minneapolis Area Office or his authorized representative.

(e) "Superintendent" means the Superintendent of the Michigan Agency.

§ 43n.2 Purpose.

The regulations in this part govern the preparation of a roll of persons who possess Grand River Ottawa Indian blood to be used to distribute the judgment funds awarded the Grand River Band of Ottawa Indians in Indian Claims Commission Docket 40-K.

§ 43n.3 Qualifications for enrollment.

The roll shall contain the names of persons who meet the following requirements:

(a) They were born on or prior to and living on October 18, 1976;

(b) Their name or the name of a lineal ancestor through whom they claim eligibility appears as a Grand River Ottawa on the roll of the Ottawa and Chippewa Tribe of Michigan, Durant Roll of 1908, containing the Commissioner's recommendation that it be approved except for those persons listed opposite numbers 747, 1331, 2437, 3957, 4462, 4684, 6151, 6273, 6275, 6496, 6525, 7028, 7035 and 7168, and those persons whose names are checked in red pencil, indicating descendants of half-breeds or mixed bloods, and in blue pencil, indicating persons who affiliated with, received rights or were enrolled members of other tribes, approved by the Secretary on February 18, 1910, with the Commissioner's recommendation, or on any available census rolls or other records acceptable to the Secretary;

(c) They possess one-fourth degree or more Grand River Ottawa Indian blood;

(d) They are citizens of the United States; and

(e) They file or have filed in their behalf applications for enrollment within the time specified in § 43n.4.

(f) In the absence of proof to the contrary, for the purposes of determining degree of Grand River Ottawa blood, all persons named as Grand River Ottawas on the Durant Roll of 1908 with the exceptions specified in paragraphs (b) and (g) of this section shall be considered as possessing 4/4 degree Grand River Ottawa Indian blood.

(g) Children named on the Durant Roll with an indication that one parent is non-Indian will be considered to possess ½ degree Grand River Ottawa Indian blood and children named on the roll with an Indian parent whose spouse is shown as non-Indian will be considered to possess ½ degree Grand River Ottawa Indian blood, provided, it can be established the non-Indian spouse is the other parent of the child.

§ 43n.4 Filing of applications and deadline for filing.

(a) Application forms may be obtained from the Superintendent, Michigan Agency, Bureau of Indian Affairs, Sault Ste. Marie, Michigan 47983. Completed applications must be received by the Superintendent by close of business on November 1, 1977.

(b) Applications received after that date will be denied for failure to file in time regardless of whether the applicants otherwise meet the requirements for enrollment.

[42 FR 33286, June 30, 1977]

§ 43n.5 Burden of proof.

The burden of proof rests upon the applicant to establish his eligibility for enrollment. Documentary evidence such as birth certificates, baptismal records, copies of probate findings or affidavits may be used to support claims for enrollment. Records of the Bureau of Indian Affairs may also be used to establish eligibility.

§ 43n.6 Action by the Superintendent.

The Superintendent must notify rejected applicants by certified mail, addressee only, return receipt requested, explaining the reason for the adverse action and advising them of their right to appeal to the Secretary.

§ 43n.7 Appeals.

Appeals from rejected applicants must be in writing and filed pursuant to Part 42 of this subchapter, a copy of which will be furnished with each notice of rejection.

§ 43n.8 Preparation of the roll.

The roll shall contain for each person a roll number, name, address, sex, date of birth, and, when applicable, the roll number and name and relationship of applicant to ancestor through whom eligibility is established.

§ 43n.9 Certification and approval of the roll.

The Superintendent shall attach a statement to the roll certifying that to the best of his knowledge and belief the roll contains only the names of those persons who meet the requirements for enrollment. The roll shall be submitted to the Area Director for approval.

§ 43n.10 Special instructions.

To facilitate the work of the Superintendent the Commissioner may issue special instructions not inconsistent with the regulations in this part.

PART 43p—REVISION OF FINAL ROLL OF THE CONFEDERATION TRIBES OF SILETZ INDIANS OF OREGON

Sec.
43p.1 Definitions.
43p.2 Purpose.
43p.3 Announcement of revision of the roll.
43p.4 Enrollment Committee.
43p.5 Tenure of Enrollment Committee.
43p.6 Basic membership roll.
43p.7 Additions to the roll.
43p.8 Deletions from the roll.
43p.9 Application forms.
43p.10 Filing of applications and deadline for filing.
43p.11 Burden of proof.
43p.12 Action on applications.
43p.13 Posting of names of enrollees.
43p.14 Protests and Appeals.
43p.15 Decisions of Secretary on protests and appeals.
43p.16 Preparation of revised roll.
43p.17 Certification and approval of revised roll.
43p.18 Publication of revised membership roll.
43p.19 Current membership roll.
43p.20 Special Instructions.

AUTHORITY: 5 U.S.C. sec. 301, R. S. secs. 463 and 465; 25 U.S.C. secs. 2 and 9, and 95 Stat. 1415.

SOURCE: 43 FR 16175, Apr. 17, 1978, unless otherwise noted.

§ 43p.1 Definitions.

As used in these regulations:

(a) "Act" means the Act of Congress approved November 18, 1977, 95 Stat. 1415, Pub. L. 95-195.

(b) "Secretary" means Secretary of the Interior or his authorized representative.

(c) "Assistant Secretary" means Assistant Secretary of the Interior for Indian Affairs or his authorized representative.

(d) "Director" means Area Director, Portland Area Office, Bureau of Indian Affairs or his authorized representative.

(e) "Tribe" means the Confederated Tribes of Siletz Indians of Oregon.

(f) "Council" means the Interim Council elected under section 5 of the Act to represent the tribe and its members in implementing the Act.

(g) "Committee" means an Enrollment Committee employed by the Council to assist the Director in the revision of the roll.

(h) "Staff officer" means the Enrollment Officer or other person authorized by the Director to prepare the roll.

(i) "Final membership roll" means the final membership roll of the tribe published on July 20, 1956, on pages 5454-5462 of volume 21 of the FEDERAL REGISTER.

(j) "Living" means born on or prior to and living on the date to be specified in the Director's announcement of the revision of the roll.

(k) "Service area" means Benton, Lane, Lincoln, Linn, Marion, Polk, Tillamook and Yamhill counties in the State of Oregon.

(l) "Sponsor" means a person who files an application for enrollment on behalf of another person. A sponsor may be a parent, recognized guardian, next friend, next of kin, spouse, executor or administrator of estate, or other person.

(m) "Descendants" means those persons who have issued from the ancestor or ancestors through whom enrollment rights are claimed, namely, children, grandchildren, etc. It does not include legally adopted children or collateral relatives such as brothers, sisters, nieces, nephews, cousins, etc.

(n) "Ancestor" means an ancestor, living or deceased, who is related to an applicant by direct ascent, namely, parent, grandparent, etc. It does not include adoptive parents or collateral relatives such as aunts, uncles, etc.

§ 43p.2 Purpose.

The regulations in this part govern the revision of the final membership roll of the tribe under the Act of November 18, 1977, 95 Stat. 1415, Pub. L. 95-195.

§ 43p.3 Announcement of revision of the roll.

When the application forms and other necessary documents have been devised and printed, the Director shall

announce that the revision of the final membership roll of the tribe shall begin on a date to be specified in the announcement. The date specified shall be not less than fifteen (15) nor more than thirty (30) days from the date the announcement is issued. A press release shall be prepared announcing the date the preparation of the roll shall begin and other pertinent information such as the membership requirements, where application forms may be obtained and when and where they should be filed. The press release shall be distributed to appropriate newspapers and radio stations within the service area of the Siletz Indians with a request that it be given wide publicity. Copies of the press release shall also be sent to all Indian Centers and shall be posted in all Bureau of Indian Affairs installations and at various other public places throughout the service area as well as in appropriate post offices in the towns within and adjacent to the service area.

§ 43p.4 Enrollment Committee.

The Council shall employ either from within or without the membership of the Council, but not from without the membership of the tribe, at least five (5) persons to serve as the enrollment committee. The committee shall assist the staff officer in identifying deceased members named on the final roll and shall review all applications for enrollment filed in accordance with these regulations and shall recommend to the director approval or rejection of the applicant. If the recommendation is for rejection it shall be supported by a memorandum explaining the reasons for the recommendation. The committee may perform other functions relating to enrollment and membership in the tribe as the Director may request or the council may from time to time direct.

§ 43p.5 Tenure of Enrollment Committee.

The committee shall serve at least until the revision of the final membership roll has been completed but no later than the date that responsibility for the tribal roll is assumed by the tribal governing body.

§ 43p.6 Basic membership roll.

All living persons whose names appear on the final membership roll shall be members of the tribe.

§ 43p.7 Additions to the roll.

There shall be added to the basic membership roll of the tribe the names of all living persons who meet the following qualifications:

(a) They were entitled on August 13, 1954, to be on the final membership roll but their names were not listed on that roll; or

(b) They are descendants of persons whose names appear on the final membership roll or who were entitled to be included on that roll and possess at least ¼ degree of blood of members of the tribe or their Siletz Indian ancestors; and

(c) They have filed an application for enrollment in accordance with the procedures set forth in this part.

§ 43p.8 Deletions from the roll.

The name of any person who was not living on the specified date shall be removed from the final membership roll by the Director upon receipt of a death certificate or other evidence of death acceptable to the Secretary.

§ 43p.9 Application forms.

(a) Application forms will be furnished by the Director, Council, or committee or other designated persons upon written or oral request. Each person furnishing application forms shall keep a record of the names of the individuals to whom applications are given, the control numbers of the forms, and the date furnished. Instructions for completing and filing applications shall be furnished with each form. The form shall indicate prominently the deadline for filing the application and the address to which it is to be mailed.

(b) Among other information, each application form shall contain:

(1) A certification as to whether the application is for a natural child or an adopted child of the parent through whom eligibility is being claimed.

(2) If the application is filed by a sponsor, the name, address, and rela-

tionship of the sponsor to the applicant.

(3) A control number for the purpose of keeping a record of applications furnished interested individuals.

§ 43p.10 Filing of applications and deadline for filing.

(a) Any person other than those persons whose names appear on the final membership roll who desires to be enrolled and who believes he meets the requirements for enrollment must file, or have filed in his behalf, a completed application form with the Director within one hundred twenty (120) days from the date specified in the announcement.

(b) Applications for minors, mental incompetents, or other persons in need of assistance may be filed on their behalf by a sponsor, but must be filed within the specified time.

§ 43p.11 Burden of proof.

The burden of proof of eligibility is on the applicant. If the applicant's ancestors through whom eligibility is claimed cannot be identified in the records, the staff officer may request the applicant to furnish whatever additional information and evidence he may consider necessary to determine the applicant's eligibility for enrollment. Failure of the applicant to furnish sufficient information to establish eligibility may be sufficient cause for rejection.

§ 43p.12 Action on applications.

(a) The Director shall consider each application, all documentation and the committee's recommendation. The Director shall accept the recommendations of the committee unless the recommendation is clearly erroneous. If the Director overrules the committee's recommendations, he shall notify the committee of his actions and the reasons therefor. Upon determining the eligibility of an applicant the Director shall notify the person who filed the application in writing of his decision. If the decision is favorable, the name of the applicant shall be placed on the roll. If the decision is not favorable, the person who filed the application shall be notified of the decision by certified mail, to be received by the addressee only, return receipt requested, together with a full explanation of the reasons for the rejection and of his right of appeal to the Secretary. (If correspondence is sent outside the states of the United States, it may be necessary to use registered mail.) If an individual files applications on behalf of more than one person, one notice of eligibility or rejection may be addressed to the person who filed the applications. However, the notice must list the name of each applicant involved.

(b) To avoid hardship or gross injustice, the staff may waive technical deficiencies in applications or other submissions.

§ 43p.13 Posting of names of enrollees.

When action has been taken on all applications filed the Director shall post in prominent places within and adjacent to the service area for review by interested persons a list of names of living persons named on the final membership roll and the names of approved applicants for enrollment. The list shall contain only the name of each enrollee and the name of the ancestor through whom eligibility was established. No other information shall be shown.

§ 43p.14 Protests and appeals.

(a) A member of the Tribe may file a protest with the Secretary with respect to the inclusion of any name on the roll and any person may protest the exclusion of any name from the roll. These protests must be in writing addressed to the Secretary, but mailed to the Area Director, Bureau of Indian Affairs, P.O. Box 3785, Portland, Oreg. 97208, and must be received by the Director before the close of business on the 30th day after the date the list of enrollees is posted as required by § 43.13. The burden of proof shall be on the person filing the protest.

(b) Any person against or for whom a protest has been filed shall be notified by the Director of the protest in writing by certified mail, to be received by the addressee only, return receipt requested, and shall have thirty (30) days from the receipt of such notice to submit additional infor-

mation or documentation in his own behalf.

(c) Appeals from rejected applicants must be in writing and must be filed under Part 42 of this Chapter, except that all appeals shall be determined by the Secretary within ninety (90) days after an appeal is received.

§ 43p.15 Decisions of the Secretary on protests and appeals.

The decision of the Secretary on a protest or appeal shall be final and written notice of the decision shall be given the applicant, protestor, or sponsor. When so directed by the Secretary, the Director shall have entered on the roll the name of any person whose eligibility has been established or have removed from the roll the name of any person who ineligibility has been proved as the result of a protest or appeal.

§ 43p.16 Preparation of revised roll.

The Director shall prepare a minimum of ten (10) copies of the completed revised roll. The roll shall contain for each person a roll or identification number, name, address, sex, date of birth, degree of Siletz Indian blood, total degree of Indian blood, and the basic membership or other roll number, name and relationship of the ancestor or ancestors through whom eligibility was established.

§ 43p.17 Certification and approval of revised roll.

The roll shall be certified by the staff officer and Council with statements that to the best of their knowledge and belief the roll contains only the names of those persons who were determined to meet the requirements for membership. The Director shall approve the roll.

§ 43p.18 Publication of revised membership roll.

After approval by the Director the revised roll shall be published in the FEDERAL REGISTER.

§ 43p.19 Current membership roll.

Until the tribe assumes responsibility for the roll the staff officer shall keep the membership roll current by adding thereto the names of children who meet the qualifications for membership in the tribe specified in the Act, and for whom an application has been filed and by deleting therefrom the names of persons who have relinquished their membership in the tribe in writing and of deceased persons upon receipt of a death certificate or other evidence of death acceptable to the Director.

§ 43p.20 Special instructions.

To facilitate the work of the Director, the Assistant Secretary may issue special instructions not inconsistent with the regulations in this Part.

PARTS 44–45—[RESERVED]

PART 46—ENROLLMENT OF INDIANS OF THE RINCON, SAN LUISENO BAND OF MISSION INDIANS IN CALIFORNIA

Sec.

46.1 Purpose.
46.2 Definitions.
46.3 Preparation of roll.
46.4 Application for enrollment.
46.5 Persons to be enrolled.
46.6 Enrollment Committee election.
46.7 Review of applications by Enrollment Committee.
46.8 Determination of eligibility and enrollment by Director.
46.9 Appeals.
46.10 Action by the Commissioner.
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46.12 Preparation and approval of roll.
46.13 Certificate.
46.14 Current membership roll.
46.15 Use of approved roll.

AUTHORITY: R.S. 463 and 465; 25 U.S.C. 2 and 9.

SOURCE: 24 FR 5567, July 10, 1959, unless otherwise noted.

§ 46.1 Purpose.

The regulations in this part shall govern the enrollment of persons in the Rincon, San Luiseno Band of Mission Indians in California as of July 21, 1957.

§ 46.2 Definitions.

As used in this part:

(a) "Secretary" means the Secretary of the Interior.

(b) "Commissioner" means the Commissioner of Indian Affairs.

(c) "Director" means the Area Director, Sacramento Area Office.

(d) "Field Representative" means the Area Field Representative, Riverside, California.

(e) "Band" means the Rincon, San Luiseno Band of Mission Indians.

(f) "Enrollment Committee" means a committee of three (3) members of adult age and now on the census roll of the Rincon, San Luiseno Band, to assist in enrollment.

(g) "Census Roll" means the 1940 census roll of the Rincon, San Luiseno Band of Mission Indians, revised as of July 21, 1957.

§ 46.3 Preparation of roll.

The Director shall prepare and submit for approval by the Secretary, a roll of the members of the Band.

§ 46.4 Application for enrollment.

A person who believes that he, or a minor, or mental incompetent, is entitled to enrollment with the Band, may within 1 year from the date of publication of this part in the FEDERAL REGISTER, file with the Field Representative a written application for enrollment in this Band. Application forms may be obtained from the Field Representative or a member of the Enrollment Committee. The form of the application shall be prescribed by the Director. The execution of each application shall be witnessed by two (2) disinterested persons who are not members of the household of the applicant. An application on behalf of a minor or mental incompetent shall be executed by a parent, natural guardian, or other person responsible for his care. If the Area Director has knowledge of a minor or mental incompetent for whom an application has not been filed within the 1-year period, he shall file an application for that person and submit it to the Enrollment Committee. Each application shall contain the following information:

(a) The name and address of the applicant, and if the applicant is a minor or mental incompetent, the name, address, representative capacity and blood relationship of the person executing the application on behalf of the minor or mental incompetent.

(b) The date and place of birth of the applicant.

(c) The applicant's degree of Indian blood and degree of Indian blood of the Rincon, San Luiseno Band.

(d) The applicant's allotment number, date of trust patent, or date and number of assignment approved by the Tribal Council.

(e) If the applicant is unallotted, the names of relatives who may have received allotments, their blood relationship to the applicant, and the name of the reservation where such relative may be allotted.

(f) The name and degree of Indian blood of each parent of the applicant, the degree of Indian blood of the Rincon, San Luiseno Band, the name of the tribe or band with which each parent of the applicant is enrolled or affiliated, and the names and addresses of any brothers and sisters of the applicant who may have filed applications for enrollment.

(g) If the applicant has previously been enrolled on the approved roll of Indians of California, the number thereon of the applicant.

[24 FR 5567, July 10, 1959, as amended at 35 FR 8823, June 6, 1970]

§ 46.5 Persons to be enrolled.

The names of persons in any of the following categories who were alive on July 21, 1957, shall be placed on the membership roll of the Rincon, San Luiseno Band of Mission Indians, provided he or she is not an enrolled member with some other tribe or band.

(a) Indians whose names appear as members of the Band on the census roll.

(b) Indians who have received allotments on the Rincon Reservation.

(c) Descendants of Indians whose names appear as members of the Band on the census roll, provided such descendants have *⅛ or more degree of Indian blood of the Band.*

(d) Descendants of allottees having *⅛ degree or more of Indian blood of the Band.*

(e) If an Indian who applies for enrollment under the provisions of paragraph (a), (c), or (d) of this section has received in his or her own right an allotment with some band or tribe, and

has not relinquished such allotment prior to July 21, 1957, such person shall not be enrolled. Ownership of an allotment or an interest in an allotment acquired through inheritance shall not, however, be a bar to enrollment.

§ 46.6 Enrollment Committee election.

A person whose name now appears as a member on the census roll of the Band shall be entitled to vote at a time and place and in a manner designated by the Band or the Director, to elect three (3) persons, twenty-one (21) years of age or older, whose names appear on such roll, as members of the Enrollment Committee and two (2) persons to act as alternates to the Committee. Three (3) persons receiving the highest number of votes shall constitute the Enrollment Committee of the Band, and the persons receiving the fourth and fifth highest number of votes shall serve as alternate members of the Committee. The person receiving the highest number of votes shall be the chairman; the person receiving the next highest number of votes shall be the secretary.

§ 46.7 Review of applications by Enrollment Committee.

The Field Representative shall refer duly filed applications for enrollment to the Enrollment Committee. The Enrollment Committee shall review each such application and may require an applicant to furnish additional information in writing or in person to assist the Enrollment Committee to make a recommendation. The Enrollment Committee shall file with the Director, through the Field Representative, those applications which it approves and with those applications not approved shall submit a separate report stating reasons for disapproval. These applications, whether approved or disapproved, shall be filed with the Director within thirty (30) days from receipt of the applications by the Committee.

§ 46.8 Determination of eligibility and enrollment by Director.

The Director shall review the reports and recommendations of the Enrollment Committee and shall determine the applicants who are eligible for enrollment in accordance with the provisions of § 46.5. The Director shall transmit for review to the Commissioner and for final determination by the Secretary, the reports and recommendations of the Enrollment Committee relating to applicants who have been determined by the Director to be eligible for enrollment against the report and recommendation of the Enrollment Committee, and the reports and recommendations of the Enrollment Committee relative to applicants who have been determined by the Director not to be eligible for enrollment against the reports and recommendations of the Enrollment Committee. With a statement of the reasons for his determination.

§ 46.9 Appeals.

If the Director determines that an applicant is not eligible for enrollment in accordance with the provisions of § 46.5, he shall notify the applicant in writing of his determination and the reasons therefor. Such applicant shall then have thirty (30) days from the date of mailing of the notice to him to file with the Director an appeal from the rejection of his application, together with any supporting evidence not previously furnished. The Director shall forward to the Commissioner the appeal, supporting data, his recommendation thereon, and the report and recommendation of the Enrollment Committee on the application.

§ 46.10 Action by the Commissioner.

When upon review the Commissioner is satisfied that the appellant meets the provisions of § 46.5 he shall so notify the appellant in writing, and the Director is authorized to enter his name on the roll. If the Commissioner determines that an appellant is not eligible for enrollment in accordance with the provisions of § 46.5 the appellant shall be notified in writing of his decision and the reasons therefor. The appellant shall then have thirty (30) days from the date of mailing of the notice to file an appeal with the Secretary.

§ 46.11 Action by the Secretary.

The decision of the Secretary on an appeal shall be final and conclusive and the appellant shall be given written notice of the decision. The Director is authorized to enter on the roll the name of any such person whose appeal has been granted when so directed by the Secretary.

§ 46.12 Preparation and approval of roll.

Upon notice from the Secretary that all appeals have been determined the Director shall prepare in quintuplicate a roll of members of the Band, arranged in alphabetical order. The roll shall contain for each person: Name, address, sex, date of birth, and degree of Indian blood of the Rincon, San Luiseno Band of Mission Indians. The Director shall submit the roll to the Secretary for approval. Four (4) copies of the approved roll shall be returned to the Director, who shall make one (1) copy available to the Chairman of the Tribal Council and one (1) copy available to the Chairman of the Enrollment Committee.

§ 46.13 Certificate.

The Director shall affix a certificate to the approved roll certifying that the roll, to the best of his knowledge and belief, contains only the names of Indians entitled to enrollment with the Band.

§ 46.14 Current membership roll.

The roll shall be kept current by striking therefrom the names of persons who have relinquished in writing their membership in the Band and of deceased persons upon receipt of a death certificate or other evidence of death acceptable to the Director and by adding thereto the names of children born after July 21, 1957, who meet the membership requirements set forth in § 46.5. It will not be necessary for the Secretary to approve each addition to or deletion from the current membership roll. However, before the roll may be used for the distribution of tribal assets it shall be submitted to the Secretary for his final approval.

§ 46.15 Use of approved roll.

Unless otherwise directed by Congress, the approved roll shall be used for all official purposes, including the allotting of tribally owned land.

PART 47—REVISION OF THE MEMBERSHIP ROLL OF THE EASTERN BAND OF CHEROKEE INDIANS, NORTH CAROLINA

Sec.
47.1 Definitions.
47.2 Purpose.
47.3 Announcement of revision of roll.
47.4 Basic membership roll.
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AUTHORITY: Sec. 2, 71 Stat. 374.

SOURCE: 24 FR 201, Jan. 8, 1959, unless otherwise noted.

§ 47.1 Definitions.

As used in this part:

(a) "Band" means the Eastern Band of Cherokee Indians in North Carolina.

(b) "Reservation" means the lands of the Eastern Band of Cherokee Indians in the counties of Jackson, Swain, Graham, Cherokee and Haywood in North Carolina.

(c) "Tribal Council" means the Tribal Council of the Eastern Band of Cherokee Indians in North Carolina.

(d) "Announcement" means the announcement of the revision of the membership roll issued as required in § 47.3.

(e) "Tribal Enrollment Office" means the Tribal Enrollment Clerk working in concert with the Enrollment Committee.

(f) "Tribal Enrollment Clerk" means the individual working in the Tribal Enrollment Office.

(g) "Enrollment Committee" means the three individuals appointed by the Tribal Council in accordance with § 47.12.

[24 FR 201, Jan. 8, 1959, as amended at 25 FR 2516, Mar. 25, 1960; 38 FR 9998, Apr. 23, 1973]

§ 47.2 Purpose.

The regulations in this part are to govern the revision, as authorized by the Act approved August 21, 1957 (71 Stat. 374), of the membership roll of the Eastern Band of Cherokee Indians, North Carolina, prepared and approved in accordance with the Act of June 4, 1924 (43 Stat. 376), and the Act of March 4, 1931 (46 Stat. 1518).

§ 47.3 Announcement of revision of roll.

When the Tribal Council has authorized the expenditure of tribal funds to supply sufficient staff to perform the work necessary to revise the membership roll of the Band and such staff has been employed and when the application forms and other necessary documents have been devised and printed, the Principal Chief, or in his absence the Vice Chief or the Chairman of the Tribal Council shall announce that a revision of the membership roll of the Band shall commence on a specified date. The date specified shall be not less than 15 days nor more than 30 days from the date of issuance of the announcement. A press release should be prepared announcing the date the revision of the roll shall begin, together with other pertinent information such as the membership requirements and where application forms may be obtained. The press release should be distributed to all newspapers and radio stations within the region of the Reservation with a request that it be given wide publicity. Copies of the press release should also be posted in the Agency Office and at various other public places throughout the Reservation as well as in Post Offices of the towns adjacent to the Reservation.

§ 47.4 Basic membership roll.

All persons whose names appear on the roll of the Eastern Band of Cherokee Indians of North Carolina, prepared and approved pursuant to the act of June 4, 1924 (43 Stat. 376), and the act of March 4, 1931 (46 Stat. 1518), shall be members of the Band.

§ 47.5 Removal of deceased persons from the roll.

The name of any person who was not alive as of midnight August 21, 1957, shall be stricken from the basic membership roll by the Tribal Enrollment Office upon receipt of a death certificate or other evidence of death acceptable to the Tribal Enrollment Office.

[38 FR 9998, Apr. 23, 1973]

§ 47.6 Additions to the roll.

There shall be added to the roll of the Band the names of persons living on August 21, 1957, who meet the following qualifications:

(a) Persons born during the period, beginning on or after June 4, 1924, and ending midnight August 21, 1957, who are direct descendants of persons whose names appear on the roll prepared and approved pursuant to the act of June 4, 1924 (43 Stat. 376), and the act of March 4, 1931 (46 Stat. 1518); provided, such persons:

(1) Who applied for membership before August 14, 1963 possess at least 1/32 degree of Eastern Cherokee Indian blood, and those persons who apply for membership on or after August 14, 1963, possess at least 1/16 degree Eastern Cherokee Indian blood, except that persons who also possess Indian blood of another tribe shall not be enrolled if they are enrolled as members of the other tribe.

(2) Have themselves or have parents who have maintained and dwelt in a home at sometime during the period from June 4, 1924, through August 21, 1957, on the lands of the Eastern Band of Cherokee Indians in the counties of Swain, Jackson, Graham, Cherokee and Haywood in North Carolina, except that this specific part of this section shall not apply to those persons and members of their families who were temporarily away from the

Reservation due to one or both parents being in the United States Armed Services or who were employed by the United States Government and neither shall it apply to those individuals who were in mental or penal institutions during this period of time.

(3) Have filed an application for enrollment with the Band in accordance with the procedures set forth in this part.

(b) A child born out of wedlock to a mother who is either an enrolled member of the Band, or who meets the qualifications for enrollment as a member, may be enrolled if such child otherwise meets the requirements for enrollment as set forth in this section.

(c) A child born out of wedlock to a mother who is not a member of the Band may be enrolled if the mother files with the Enrollment Committee proof established in accordance with the laws of North Carolina as to the paternity of the child and the person adjudged to be the father is either an enrolled member of the Band, or meets the requirements for enrollment as a member, and if the child otherwise meet the requirements for enrollment as set forth in this section.

[24 FR 201, Jan. 8, 1959, as amended at 25 FR 2516, Mar. 25, 1960; 28 FR 8314, Aug. 14, 1963]

§ 47.7 Applications for enrollment.

Each adult person who believes he meets the requirements for enrollment established herein may submit to the Tribal Enrollment Office an application for enrollment as a member of the Eastern Band of Cherokee Indians.

[38 FR 9998, Apr. 23, 1973]

§ 47.8 Applications for minors and incompetents.

Applications for enrollment of minors may be filed by the parent, next of kin, recognized guardian, or other person responsible for their care. Applications for enrollment of persons known to be in mental or penal institutions may be filed by the Principal Chief of the Eastern Band of Cherokee.

[38 FR 9998, Apr. 23, 1973]

§ 47.9 Application form.

The form of application for enrollment will be prepared by the Tribal Enrollment Office and, in addition to whatever information the Enrollment Committee may deem necessary, shall contain the following:

(a) The name and address of the applicant. If the application is filed on behalf of a minor, the name and address of the person filing the application and his relationship to the minor.

(b) The name, relationship, tribe and roll number of the ancestor or ancestors through whom enrollment rights are claimed, and whether applicant is enrolled with another tribe.

(c) The date of death of such ancestor, if deceased.

[38 FR 9998, Apr. 23, 1973]

§ 47.10 Where application forms may be obtained.

Application forms will be supplied by the Tribal Enrollment Office of the Eastern Band of Cherokee Indians, Council House, Cherokee, N.C. 28719, upon request, either in person or by mail.

[38 FR 9998, Apr. 23, 1973]

§ 47.11 Proof of relationship.

If the applicant's parents or other Eastern Cherokee ancestors through whom the applicant claims enrollment rights are unknown to the Tribal Enrollment Office, the Tribal Enrollment Office may request the applicant to furnish such additional information and evidence as it may deem necessary to determine the applicant's eligibility for enrollment. Failure of the applicant to furnish the information requested may be deemed sufficient cause for rejection.

[38 FR 9998, Apr. 23, 1973]

§ 47.12 Enrollment Committee.

The Tribal Council shall appoint either from within or without the membership of the Council, but not from without the membership of the Band, a committee of three (3) persons to serve as the Enrollment Committee. The Enrollment Committee shall review all applications for enrollment filed in accordance with the existing

regulations, and shall determine the qualifications of the applicant for enrollment with the Band. The Enrollment Committee may perform such other functions relating to the enrollment and membership in the Band as the Tribal Council may from time to time direct.

[38 FR 9999, Apr. 23, 1973]

§ 47.13 Tenure of Enrollment Committee.

The members of the Enrollment Committee shall be appointed to serve a term of office of 2 years by each newly elected Tribal Council.

[38 FR 9999, Apr. 23, 1973]

§ 47.14 Appeals.

Any person whose application for enrollment has been rejected by the Enrollment Committee shall have the right to appeal to the Tribal Council from the determination made by the Enrollment Committee: *Provided*, That such appeal shall be made in writing and shall be filed in the office of the Principal Chief for presentation to the Tribal Council within sixty (60) days from the date on which the Enrollment Committee issues notice to the applicant of his rejection. The applicant may submit with his appeal any additional data to support his claim to enrollment not previously furnished. The decision of the Tribal Council as to whether the applicant meets the requirements for enrollment set forth in this part shall be final. The Tribal Council shall review no applications for enrollment except in those cases where the rejected applicant appeals to the Council in writing from the determination made by the Enrollment Committee.

[38 FR 9999, Apr. 23, 1973]

§ 47.15 Current membership roll.

The membership roll of the Eastern Band of Cherokee Indians shall be kept current by striking therefrom the names of persons who have relinquished their membership in the Band as provided in § 47.17 and of deceased persons upon receipt of a death certificate or other evidence of death acceptable to the Tribal Enrollment Office, and by adding thereto the names of individuals who meet the qualifications and are accepted for membership in the Band as set forth in this part.

[38 FR 9999, Apr. 23, 1973]

§ 47.16 Eligibility for enrollment of persons born after August 21, 1957.

(a) Persons possessing one-sixteenth or more degree Eastern Cherokee Indian blood and born after August 21, 1957, may be enrolled in either of the following manners:

(1) An application to have the person enrolled must be filed by or on behalf of the person by the parent or recognized guardian or person responsible for his care, which application shall be accompanied by the applicant's birth certificate or by other evidence of eligibility of the applicant for enrollment that the Tribal Enrollment Office may require.

(2) In the absence of such application within 6 months after a person's birth, the Tribal Enrollment Office shall be authorized and encouraged to obtain evidence relating to the eligibility of the person for enrollment in the Eastern Band, and present an application in his behalf to the Enrollment Committee which may proceed to enroll the person if the evidence submitted meets the criteria.

(b) A person adopted in accordance with applicable laws by either tribal members or nonmembers, shall be considered for enrollment as a tribal member if the person otherwise meets the requirements for enrollment.

(c) A person born to an enrolled member of the Band and an enrolled member of another Tribe, and said person is enrolled in the other Tribe, may be transferred from the rolls of the other and added to the rolls of the Eastern Band if he meets the general requirements for enrollment and, in addition:

(1) A death certificate or other acceptable evidence of the death of the parent enrolled in the other Tribe is received and the surviving parent who is a member of the Eastern Band makes application for enrollment by way of transfer.

(2) Upon receipt of divorce documents in the Tribal Enrollment Office, there is evidence of custody of the minors being awarded to the parent who is a member of the Band and the

parent awarded custody makes application for enrollment of the minors with the Eastern Band by way of transfer.

(d) In order for a child to be enrolled under paragraph (b) or (c) of this section, either:

(1) An application to have the child enrolled must be filed on behalf of the child by the parent or recognized guardian or person responsible for his care, which application shall be accompanied by the child's birth certificate or by other evidence as to the eligibility of the child for enrollment as the Enrollment Committee may require, which application must be filed within one year from the date of birth of such child, or

(2) In the absence of such application, the Tribal Enrollment Committee may on its own motion, proceed to enroll any eligible child upon receipt by it of such evidence as shall satisfy the Committee as to the eligibility of the child to be enrolled, within one year from date of birth of such child.

[28 FR 8315, Aug. 14, 1963, as amended at 29 FR 9326, July 8, 1964; 38 FR 9999, Apr. 23, 1973]

§ 47.17 Relinquishment of membership.

Any member of the Eastern Band of Cherokee Indians may relinquish his membership in the Band by filing notice in writing that he no longer desires to be enrolled as a member of the Band. On receipt of such notice the name of the members shall be stricken from the roll and he shall no longer be considered as a member of the Band and shall not be entitled to share in any use or in any distribution of tribal assets which may be made in the future to the enrolled members of the Band.

§ 47.18 Adoption.

The Tribal Council of the Eastern Band of Cherokee Indians shall be empowered to enact ordinances governing the adoption of new members.

[39 FR 43391, Dec. 13, 1974]

§ 47.19 Distribution of judgment funds.

The membership roll of the Eastern Band of Cherokee Indians of North Carolina will be brought up to date as of October 10, 1974, to serve as the basis for distributing certain judgment funds awarded to the Band in Indian Claims Commission dockets 282-A through L.

(a) Filing of and action on applications shall be in accordance with regulations in this Part 47, except as otherwise provided in paragraphs (b) through (g) of this section.

(b) In lieu of notice provisions contained in § 47.3, the Commissioner of Indian Affairs or his authorized representative shall provide notice of the bringing up to date of the membership roll through publication of these amended regulations in the FEDERAL REGISTER and through appropriate press releases and other public notices.

(c) Application forms may be obtained from the Tribal Enrollment Office of the Eastern Band of Cherokee Indians, Council House, Cherokee, North Carolina 28719. Completed applications must be received by the Tribal Enrollment Office no later than midnight January 8, 1975.

(d) Requests for applications for enrollment in the Band received after midnight of the deadline date will not be furnished until after the funds have been distributed.

(e) In lieu of the procedures given in § 47.14, appeals from rejected applicants must be in writing and filed pursuant to Part 42 of this Subchapter, a copy of which shall be furnished with each notice of rejection.

(f) The Tribal Council and the Superintendent shall attach separate statements to the roll certifying that to the best of their knowledge and belief, the roll contains only the names of those persons who were determined to meet the requirements for enrollment. The roll shall then be submitted through the Area Director to the Commissioner for approval.

(g) To facilitate the work of the Tribal Enrollment Committee the Commissioner may issue special instructions not inconsistent with the regulations in this Part 47.

[39 FR 43391, Dec. 13, 1974]

PART 48—ENROLLMENT OF INDIANS OF THE SAN PASQUAL BAND OF MISSION INDIANS IN CALIFORNIA

Sec.
48.1 Purpose.
48.2 Definitions.
48.3 Preparation of roll.
48.4 Application for enrollment.
48.5 Persons to be enrolled.
48.6 Enrollment Committee election.
48.7 Review of applications by Enrollment Committee.
48.8 Determination of eligibility and enrollment by Director.
48.9 Appeals.
48.10 Action by the Commissioner.
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48.12 Preparation and approval of roll.
48.13 Certificate.
48.14 Current membership roll.
48.15 Use of approved roll.

AUTHORITY: R.S. 463, 465; 25 U.S.C. 2, 9.

SOURCE: 25 FR 1830, Mar. 2, 1960, unless otherwise noted.

§ 48.1 Purpose.

The regulations in this part shall govern the enrollment of persons in the San Pasqual Band of Mission Indians in California as of January 1, 1959.

§ 48.2 Definitions.

(a) "Secretary" means the Secretary of the Interior.

(b) "Commissioner" means the Commissioner of Indian Affairs.

(c) "Director" means the Area Director, Sacramento Area Office.

(d) "Field Representative" means the Area Field Representative, Riverside, California.

(e) "Band" means the San Pasqual Band of Mission Indians.

(f) "Enrollment Committee" means a committee of three (3) members whose names appear on the June 30, 1910, Census Roll of the San Pasqual Band, to assist in enrollment.

(g) "Census Roll" means the June 30, 1910, Census Roll of the San Pasqual Band of Mission Indians.

§ 48.3 Preparation of roll.

The Director shall prepare and submit for approval by the Secretary a roll of the members of the Band.

§ 48.4 Application for enrollment.

A person who believes that he or she, or a minor or mental incompetent is entitled to enrollment with the Band, may, within ninety (90) days from the effective date of these regulations file with the Field Representative a written application for enrollment in this Band. Application forms may be obtained from the Field Representative or a member of the Enrollment Committee. The form of application shall be prescribed by the Director. The execution of each application shall be witnessed by two (2) disinterested persons who are not members of the household of the applicant. An application on behalf of a minor or mental incompetent shall be executed by a parent, legal guardian, or other person responsible for his care. If the Director has knowledge of a minor or mental incompetent for whom an application has not been filed within the 90-day period, he shall file an application for that person and submit it to the Enrollment Committee. Each application shall contain the following information:

(a) The name and address of the applicant, and if the applicant is a minor or mental incompetent; the name, address, representative capacity and blood relationship of the person executing the application on behalf of the minor or mental incompetent.

(b) The date and place of birth of the applicant.

(c) The applicant's degree of Indian blood and degree of Indian blood of the Band.

(d) Date and number of land assignment approved by the Bureau of Indian Affairs.

(e) If the applicant has ever been allotted, enrolled or affiliated with another reservation, the name of the reservation where allotted, enrolled or affiliated and the date of relinquishment of allotment, enrollment or reservation affiliation.

(f) The name and degree of Indian blood of each parent of the applicant, the degree of Indian blood of the Band, the name of the tribe or band with which each parent of the applicant is or was enrolled or affiliated and the names and addresses of any brothers and sisters of the applicant

who may have filed applications for enrollment with the Band.

(g) If the applicant is enrolled on approved roll of Indians of California, the number thereon of the applicant.

[25 FR 1830, Mar. 2, 1960, as amended at 25 FR 3711, Apr. 28, 1960]

§ 48.5 Persons to be enrolled.

The names of persons in any of the following categories who were alive on January 1, 1959, shall be placed on the membership roll of the Band, provided he is not an enrolled member of or affiliated with some other tribe or band.

(a) Indians whose names appear as members of the Band on the Census Roll.

(b) Descendants of Indians whose names appear as members of the Band on the Census Roll, provided such descendants possess one-eighth (⅛) or more degree of Indian blood of the Band.

(c) Indians not included in the categories set out in paragraphs (a) and (b) of this section who can furnish sufficient proof to establish that they are ⅛ or more degree Indian blood of the Band.

(d) The burden of proof rests upon the applicant to establish that he is of the degree of Indian blood of the Band as claimed in the application.

(e) If an Indian who applies for enrollment under the provisions of paragraph (a), (b), or (c) of this section has received in his own right an allotment or is enrolled as a member with some other tribe or band and has not relinquished such allotment or enrollment prior to January 1, 1959, such person shall not be enrolled. Ownership of an allotment or an interest in an allotment acquired through inheritance shall not, however, be a bar to enrollment.

(f) A person who meets the requirements of paragraph (a), (b), or (c) of this section, but whose name has been carried on the census roll of another reservation shall be declared ineligible for enrollment unless he can establish that he has been affiliated with the San Pasqual Band for a continuous period of at least one year immediately prior to January 1, 1959, evidenced by residence on the reservation or through active participation in tribal affairs such as attendance at tribal meetings, and being permitted to vote on matters relating to the San Pasqual Reservation. Should an applicant establish his eligibility for enrollment his membership claim at the other reservation must be relinquished in writing prior to approval of his enrollment with the San Pasqual Band. Notice of relinquishment must be submitted to the tribal representatives of both reservations involved, the Riverside Area Field Office and the Sacramento Area Office.

§ 48.6 Enrollment Committee election.

A person who is twenty-one (21) years of age or older and believes that he is a member of the Band, shall be entitled to vote at a time and place and in a manner designated by the Band or Director, to elect three (3) persons, whose names appear on the Census Roll, to serve as members of the Enrollment Committee and two (2) persons to act as alternates to the Committee. The three (3) persons receiving the highest number of votes shall constitute the Enrollment Committee of the Band, and the persons receiving the fourth and fifth highest number of votes shall serve as alternate members of the Committee. The person receiving the highest number of votes shall be the chairman; the person receiving the next highest number of votes shall be the secretary.

§ 48.7 Review of applications by Enrollment Committee.

The Field Representative shall refer duly filed applications for enrollment to the Enrollment Committee. The Enrollment Committee shall review each such application and may require an applicant to furnish additional information in writing or in person to assist the Enrollment Committee to make a recommendation. The Enrollment Committee shall file with the Director, through the Field Representative, those applications which it approves and with those applications not approved shall submit a separate report stating reasons for disapproval. The applications, whether approved or disapproved, shall be filed with the Director within thirty (30) days from re-

ceipt of the applications by the Committee.

§ 48.8 Determination of eligibility and enrollment by Director.

The Director shall review the reports and recommendations of the Enrollment Committee and shall determine the applicants who are eligible for enrollment in accordance with the provisions of § 48.5. The Director shall transmit for review to the Commissioner and for final determination by the Secretary, the reports and recommendations of the Enrollment Committee relating to applicants who have been determined by the Director to be eligible for enrollment against the report and recommendations of the Enrollment Committee, and the reports and recommendations of the Enrollment Committee relative to applicants who have been determined by the Director not to be eligible for enrollment against the reports and recommendations of the Enrollment Committee, with a statement of the reasons for his determination.

§ 48.9 Appeals.

If the Director determines that an applicant is not eligible for enrollment in accordance with the provisions of § 48.5 he shall notify the applicant in writing of his determination and the reasons therefor. Such applicant shall then have thirty (30) days from the date of the mailing of the notice to him to file with the Director an appeal from the rejection of his application, together with any supporting evidence not previously furnished. The Director shall forward to the Commissioner the appeal, supporting data, and his recommendation thereon, and the report and recommendation of the Enrollment Committee on the application.

§ 48.10 Action by the Commissioner.

When upon review the Commissioner is satisfied that the appellant meets the provisions of § 48.5 he shall so notify the appellant in writing, and the Director is authorized to enter his name on the roll. If the Commissioner determines that an appellant is not eligible for enrollment in accordance with the provisions of § 48.5 the appellant shall be notified in writing of his decision and the reasons therefor. The appellant shall then have thirty (30) days from the date of mailing of the notice to file an appeal with the Secretary.

§ 48.11 Action by the Secretary. Roll.

The decision of the Secretary on an appeal shall be final and conclusive and the appellant shall be given written notice of the decision. The Director is authorized to enter on the roll the name of any such person whose appeal has been granted when so directed by the Secretary.

§ 48.12 Preparation and approval of roll.

Upon notice from the Secretary that all appeals have been determined the Director shall prepare in quintuplicate a roll of members of the Band, arranged in alphabetical order. The roll shall contain for each person: Name, address, sex, date of birth, and degree of Indian blood of the Band. The Director shall submit the roll to the Secretary for approval. Four (4) copies of the approved roll shall be returned to the Director who shall make one (1) copy available to the Chairman of the Tribal Council and one (1) copy available to the Chairman of the Enrollment Committee.

§ 48.13 Certificate.

The Director shall affix a certificate to the approved roll, certifying that the roll, to the best of his knowledge and belief, contains only the names of Indians entitled to enrollment with the Band.

§ 48.14 Current membership roll.

The roll shall be kept current by:

(a) Striking therefrom the names of persons who have relinquished in writing their membership in the Band and of deceased persons upon receipt of a death certificate or other evidence of death acceptable to the Director.

(b) By adding thereto the names of children born after January 1, 1959, who meet the membership requirements set forth in § 48.5.

(c) Corrections to the roll of incorrect dates of birth, degrees of Indian blood, family relationships, etc., may be made by the Director if such cor-

rections are supported by evidence satisfactory to him.

(d) Names of individuals whose enrollment was based on information subsequently determined to be inaccurate may be deleted from the roll, subject to the approval of the Secretary.

(e) It will not be necessary for the Secretary to approve additions, deletions and corrections as covered in paragraphs (a), (b) and (c) of this section. However, before the roll may be used for the distribution of tribal assets it shall be submitted to the Secretary for his final approval.

§ 48.15 Use of approved roll.

Unless otherwise directed by Congress, the approved roll shall be used for all official purposes.

PARTS 49–50—[RESERVED]

SUBCHAPTER G—TRIBAL GOVERNMENT

PART 52—TRIBES ORGANIZED UNDER SECTION 16 OF THE INDIAN REORGANIZATION ACT

Sec.
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52.21 Certifying election returns.

AUTHORITY: 25 U.S.C. 476.

SOURCE: 29 FR 14359, Oct. 17, 1964, unless otherwise noted.

§ 52.1 Definitions.

As used in this Part 52:

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Secretarial election" means an election held within a tribe pursuant to regulations prescribed by the Secretary.

(c) "Officer in Charge" means the Superintendent, Administrative Officer, or other official of the local unit of the Bureau of Indian Affairs having jurisdiction.

(d) "Indian" means all persons who are members of, or are eligible for membership in, an Indian tribe under Federal jurisdiction and which tribe has not voted to exclude itself from the Act of June 18, 1934 (43 Stat. 984, as amended, 25 U.S.C. 461, et seq.).

(e) "Adult Indian" means any Indian who has attained the age of 18 years.

(f) "Tribe" means any Indian tribe, organized band, pueblo, or the Indians residing on an Indian reservation or reservations. Such tribes may consist of any consolidation of one or more tribes or parts of tribes.

(g) "Recognized tribe" means any Indian tribe which has entered into a treaty, convention or executive agreement with the Federal Government or whose tribal entity has been otherwise recognized by the United States.

(h) "Reservation" means any area established by treaty, Federal statute, executive order, or otherwise for the use and occupancy of Indians.

(i) "Indian Reorganization Act" means the Act of June 18, 1934 (48 Stat. 984, as amended, 25 U.S.C. 461, et seq.).

(j) "Constitution," "constitution and bylaws" means the written organizational framework of any organized tribe for the exercise of governmental powers.

(k) "Organized tribe" means a tribe which accepted the Act of June 18, 1934 (48 Stat. 984, as amended, 25 U.S.C. 461, et seq.), and adopted a constitution pursuant to the provisions of the Act, supra.

(l) "Unorganized tribe" means a tribe which, not having voted to exclude itself from the Act of June 18, 1934 (48 Stat. 984, as amended, 25 U.S.C. 461, et seq.), is entitled to organize pursuant to the provisions of the Act, supra, but has not done so.

[29 FR 14359, Oct. 17, 1964, as amended at 38 FR 9999, Apr. 23, 1973]

§ 52.2 Purpose and scope.

The purpose of this Part 52 is to provide uniformity and order in holding elections to vote on constitutions and bylaws and constitutional amendments, and to facilitate the calling of such elections by the Secretary under the provisions of the Indian Reorganization Act.

§ 52.3 Group eligibility.

A constitution and bylaws may be adopted (a) by a tribe or tribes of a reservation, (b) by adult Indian residents of a reservation, or (c) by a traditionally recognized tribe, except that no group which has voted to reject the provisions of the Indian Reorganiza-

tion Act shall be organized under the Act. A tribe organized under the Indian Reorganization Act shall adopt amendments to its constitution and bylaws under the regulations in this part.

§ 52.4 Assistance from the Department of the Interior.

The Department of the Interior will cooperate with and offer advice and assistance to any eligible group in drafting a constitution and bylaws or an amendment.

§ 52.5 Request to call election.

The Secretary will authorize the calling of an election on adoption of a constitution and bylaws upon request by the tribal governing body or an authorized representative committee or upon petition filed by at least one-third of the adult members of the group. An election of the adoption of amendments to the constitution and bylaws shall be authorized by the Secretary when requested as provided in the amendment article of the constitution and bylaws; however, the election shall be conducted in the manner prescribed in the rules and regulations in this part. The Secretary may propose amendments to the constitution for consideration at Secretarial elections, unless the constitution and bylaws for Secretarial elections provides otherwise. Any authorization not acted upon within ninety (90) days from the date of issuance will be considered void.

[32 FR 11778, Aug. 16, 1967]

§ 52.6 Entitlement to vote.

(a) If the unorganized group is a tribe or tribes of a reservation:

(1) Any adult member regardless of residence shall be entitled to vote: *Provided*, He has duly registered.

(2) Duly registered adult nonresidents or ill or physically disabled registered members may vote by absentee ballot. See § 52.17.

(b) If the unorganized group is composed of the adult Indian residents of a reservation:

(1) Any adult Indian resident shall be entitled to vote: *Provided*, He has duly registered.

(2) Absentee voting shall be permitted for duly registered residents temporarily absent from the reservation, ill, or physically disabled.

(c) For organized tribes voting in elections for amendments of the constitution and bylaws, only voters who have duly registered are entitled to vote, i.e., if the group was organized as a tribe, absentee balloting is permitted, but if the group was organized as residents of a reservation, absentee balloting will not be permitted except as provided in paragraph (b)(2) of this section.

[32 FR 11778, Aug. 16, 1967]

§ 52.7 Adoption by majority vote.

A constitution and bylaws or amendment shall be considered adopted if a majority of those actually voting vote in favor of adoption provided the total vote cast is not less than 30 percent of those entitled to vote; but no action shall become effective until it is approved by the Secretary.

§ 52.8 Election Board.

(a) There shall be an Election Board consisting of the Officer in Charge acting as chairman and two representatives of an authorized council or committee of Indians. In addition the Officer in Charge may appoint an interpreter and as many clerks and poll watchers as he deems necessary but they shall not be members of the board.

(b) It shall be the duty of the board to conduct elections in compliance with the procedures described in this Part 52 and in particular, (1) to see that the name of each person offering to vote is on the official list of registered voters; (2) to keep the ballot boxes locked at all times except when ballots are being counted; (3) to see that the ballot is cast by the voter himself and that thereupon the voting list is checked to indicate this; (4) as a board to count the regularly cast ballots immediately after the close of the polls, and the absentee ballots immediately after expiration of the time for their receipt; (5) to certify the election returns; (6) to return all the ballots to the ballot boxes which shall be marked and locked together with all

unused ballots and a copy of the election returns, to the Officer in Charge.

[29 FR 14359, Oct. 17, 1964, as amended at 32 FR 11778, Aug. 16, 1967]

§ 52.9 District Election Boards.

Where the reservation has been divided into voting districts either by the tribal constitution, ordinance, or resolution, or by the Election Board, the Election Board shall appoint District Election Boards for each district which shall have the duties above prescribed for the Election Board except that it should return the ballots in the ballot boxes, all unused ballots and its certification (certification form as prescribed by the Election Board) of the district election results to the Election Board which will make the final recapitulation of the election results for the entire reservation and transmit it together with all of the aforementioned ballots and ballot boxes to the Officer in Charge.

§ 52.10 Voting districts.

If voting districts have not already been designated and delimited in the tribal constitution or by tribal ordinance or resolution, and in its judgment voting districts throughout the reservation are needed, the Election Board shall delimit them and designate a polling place for each district, taking into consideration the needs and convenience of tribal members.

§ 52.10a Registration.

(a) The Election Board upon receipt of authorization to conduct an election shall notify by certified mail all adult Indians of the tribe who, to its knowledge, are not living on the reservation of the need to register if they intend to vote. Notice of the need to register shall be sent by regular mail to all eligible voters who reside on the reservation. Any Indian who will become 18 years of age within 90 days from the date of authorization shall also be notified and shall be eligible to register; Provided, He shall not be entitled to vote should election day fall before his 18th birthday. Such notice shall be sent to an individual's last known address as it may appear on the records of the local unit of the Bureau of Indian Affairs having jurisdiction. Each notice addressed to a tribal member not residing on the reservation shall be accompanied by an appropriate preaddressed registration form which shall provide space for at least the name and address of the person desiring to register and for attesting that he or she is a tribal member either 18 years of age or over, or will be within 90 days from the date of authorization. Such nonresident who wishes to participate in the election must complete and return the registration form before or in conjunction with requesting an absentee ballot. Indians living on the reservation who desire to vote must register with the Election Board in the manner it determines in sufficient time to permit compliance with § 52.11.

(b) Registration in accordance with paragraph (a) of this section shall be valid for a period of three years from the date of the election for which it was initially required. Such initial registration shall suffice for any subsequent election called pursuant to this part within that period. Between occasions of official registration, it shall be the responsibility of each person who becomes eligible to vote to notify the officer in charge of his desire to register. Said officer shall provide him with the necessary registration form. Upon return of the properly completed form, the officer in charge shall insure that the name of said registrant is placed upon the list of registered voters. Registrants shall, likewise, be responsible for notifying the officer in charge of any change affecting their status.

[32 FR 11778, Aug. 16, 1967, as amended at 38 FR 9999, Apr. 23, 1973]

§ 52.11 Voting list.

The election board shall compile in alphabetical order an official list of registered voters, arranged by voting districts, if any, of the members of the tribe who are or will have attained the age of 18 years within 90 days from the date an election is authorized and who have duly registered to vote. A copy of this list shall be supplied to each district election board and also posted at the headquarters of the local administrative unit of the Bureau of Indian Affairs and at various public

places designated by the election board throughout the reservation at least 20 days prior to the election.

[38 FR 10000, Apr. 23, 1973]

§ 52.12 Eligibility disputes.

The Election Board shall determine any written claim to vote presented to it by one whose name does not appear on the official list of registered voters as well as any written challenge of the right to vote of anyone whose name is on the list, and its decision shall be final. It shall set a date not more than ten nor less than five days before the election to pass on all such matters. All claims not presented on or before this date shall be automatically disallowed.

[29 FR 14359, Oct. 17, 1964, as amended at 32 FR 11778, Aug. 16, 1967]

§ 52.13 Election notices.

Not less than twenty (20) nor more than sixty (60) days' notice shall be given of an election and the need for nonregistered voters to register unless otherwise authorized by the Secretary. If an election is called upon less than twenty (20) days' notice, registered absentee voters shall nevertheless be allowed twenty (20) days from the giving of such notice for the Election Board to receive their ballots. In such an election the posting of the official list of registered voters shall coincide with the giving of such notice. The Election Board shall determine whether the notice shall be given by television, radio, newspaper, poster, or mail, or by one or more of these methods, and whether in an Indian language in addition to English. A copy of any written election notice may be mailed to each registered voter and posted at the local administrative unit of the Bureau of Indian Affairs and elsewhere as directed by the Election Board. At any time subsequent to receipt of Secretarial authorization to hold the election, the text of any amendment or proposed constitution shall be made available to the eligible voters of the tribe. The manner and timing of the dissemination shall be within the discretion of the Election Board.

[29 FR 14359, Oct. 17, 1964, as amended at 32 FR 11778, Aug. 16, 1967]

§ 52.14 Opening and closing of polls.

The polls shall remain open from 8 a.m. to 7 p.m., local time, unless different hours are set by the Election Board and the voters informed thereof in the election notice.

§ 52.15 Manner of voting.

Any registered voter may vote by presenting himself at the polls of his voting district within the prescribed voting period, announcing to the officials there his name and address and by marking and placing in the ballot box the ballot which shall be handed to him. Voting shall be by secret ballot. See § 52.17 covering absentee voting.

[32 FR 11778, Aug. 16, 1967]

§ 52.16 Ballots.

The Election Board shall cause to be prepared and furnish all ballots. Each ballot shall be stamped:

OFFICIAL BALLOT

(Facsimile Signature)

CHAIRMAN, ELECTION BOARD

Should any voter spoil or mutilate his ballot in the course of voting, he shall, in the presence of the election officials, and, with their consent, destroy it; the election officials shall then make note of the destroyed ballot and furnish the voter with another ballot.

§ 52.17 Absentee voting.

Nonresident members who have registered may vote by absentee ballot except as prohibited by § 52.6(c). Also, whenever due to temporary absence from the reservation, illness, or physical disability, a registered eligible voter is not able to vote at the polls and duly causes the election board to be notified thereof, ballot. The election board shall give or mail ballots for absentee voting to registered voters upon request in sufficient time to permit the voter to execute and return the same on or before the date of the election or within the time allowed by the election board. Together

with the ballot there shall be an inner envelope bearing on the outside the words "Absentee Ballot," a preaddressed outer envelope, and a certificate in form as follows:

I (name), hereby certify that I am a member of the . . . Tribe of Indians; that I will be 18 years of age or over at the election date, am entitled to vote in the election to be held on (date of election); and that I cannot appear at the polling place on the reservation on the date of the election because (indicate one of the following reasons) I expect to be absent from the reservation—, or because of illness—, or physical disability—. I further certify that I marked the enclosed ballot in secret.

Signed: (Voter's signature)

The voter shall mark such ballot and the ballot shall then be folded so as to conceal the marking and be placed in the envelope marked "Absentee Ballot" and the envelope sealed. The voter shall then complete the certificate and place the sealed envelope marked "Absentee Ballot" together with the certificate in the outer envelope and mail it or have it delivered. The preaddressed outer envelope shall be directed to the election board at the reservation. Absentee Ballots must be received by the Election Board not later than the close of the polls on election day, except as covered by § 52.13. The election board shall make and keep a record of ballots mailed, to whom mailed, the date of mailing, the address on the envelope, the date of the return of such ballot, and from whom received, and shall count and register all such votes after all other ballots have been counted and include them in the result of the election.

[38 FR 10000, Apr. 23, 1973]

§ 52.18 Contesting of election results.

Any qualified voter, within three days following the announcement of the results of an election, may challenge the election results by filing with the Secretary through the Officer in Charge his grounds for the challenge, together with substantiating evidence thereof. If in the opinion of the Secretary, the objections are valid and are of a nature to so warrant, the Secretary shall order a recount or a new election. The results of the recount shall be final.

§ 52.19 Interpreters.

Interpreters where needed may be provided to explain the manner of voting to such Indians who ask for instruction provided all reasonable precautions are taken so that the interpreter does not influence the voter in casting his ballot. The interpreter shall not accompany the voter into the booth.

§ 52.20 Electioneering.

There shall be no electioneering during voting hours within 50 feet of any voting place. Sample ballots will be permitted in the voting booth.

§ 52.21 Certifying election returns.

A telegraphic report should be made to the Commissioner of Indian Affairs immediately after the results of the election are determined. The results of the election shall be posted in the Agency Office and at other public places of the reservation. The Election Board shall certify the results of the election on the following form and transmit it to the Bureau:

Certificate of Results of Election. Pursuant to an election authorized by the Secretary of the Interior on (Date), the attached constitution and bylaws, or amendment, of the (Name of organization) was submitted to the qualified voters of the tribe and was on (Date) duly (rejected) (adopted) by a vote of . . . for and . . . against, in an election in which at least 30 percent of the (Number of members entitled to vote) members entitled to vote cast their ballot in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378). Signed: (By the chairman of the Election Board and the two board members.)

PART 53—TRIBES ORGANIZED UNDER SECTION 16 OF INDIAN REORGANIZATION ACT AND OTHER ORGANIZED TRIBES

Sec.

53.1 Definitions.
53.2 Purpose and scope.
53.3 Applicability to tribal groups.
53.4 Petition format.
53.5 Notarization of petition signatures.
53.6 Filing of petitions.
53.7 Challenges.
53.8 Action on the petition.

AUTHORITY: 5 U.S.C. 301 and 25 U.S.C. 2 and 9; and 25 U.S.C. 476.

SOURCE: 32 FR 11779, Aug. 16, 1967, unless otherwise noted.

§ 53.1 Definitions.

As used in this Part 53:

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(c) "Local Bureau Official" means the Superintendent, Field Representative or other line officer of the Bureau of Indian Affairs who has local administrative jurisdiction over the tribe concerned.

(d) "Bureau" means the Bureau of Indian Affairs.

(e) "Tribe" means any recognized Indian, Eskimo, or Aleut tribe, organized band, pueblo, or community which is subject to the jurisdiction of the Bureau of Indian Affairs and which has adopted a constitution approved by the Commissioner or the Secretary.

(f) "Spokesman for the petitioner" means the authorized voter of a tribe initiating a petition or designated by the initiators of a petition to speak in their behalf.

(g) "Constitution" means the organizational framework of any organized tribe for the exercise of governmental powers.

§ 53.2 Purpose and scope.

The purpose of this part is to provide uniformity and order in the formulation and submission of petitions requesting the Secretary or the Commissioner to call elections to amend tribal constitutions as such documents may provide.

§ 53.3 Applicability to tribal groups.

The regulations, policies, and procedures set forth in this part apply to any tribe which provides through its constitution for the Secretary or the Commissioner to call elections to amend tribal constitutions upon filing a petition signed by a stipulated percentage or number of tribal members who are eligible voters under the constitution of the tribe involved.

§ 53.4 Petition format.

Petitions may consist of as many pages as are necessary to accommodate the signatures of the petitioners. However, each sheet of a petition must set forth at least a summary of the objectives of the petitioners and must show the date upon which the petition was signed by each individual, as well as the current mailing address of each signer.

§ 53.5 Notarization of petition signatures.

Signatures to a petition must be authenticated in one of the following ways: (a) Through having each signer subscribe or acknowledge his signature before a notary public; (b) through having the collector of signatures appear before a notary and sign, in his presence on each sheet of the petition, a statement attesting that the signatures were affixed on the dates shown and by the individuals whose names appear thereon, and that to the best of his knowledge the signatories thereto are eligible voters. Only an eligible tribal voter shall be recognized as a valid collector of signatures to a petition.

§ 53.6 Filing of petitions.

All petitions submitted pursuant to this section must be filed with the local Bureau official responsible for administering the tribe's affairs. No petitions will be accepted until a spokesman for the petitioners declares that he wishes to make an official filing. Once a declaration of an official filing is made and the petition is given to the local Bureau official, that official shall immediately designate thereon the date of receipt and shall inform the spokesman for the petitioners that no additional signatures may be added and that no withdrawl of signatures will be subsequently permitted. The local Bureau official shall also acknowledge in writing his recipt of the petition, indicating the exact number of signatures which are attached. Upon this written acknowledgment of the petition, the local Bureau official shall publicly post at the local Bureau unit serving the tribe the matter proposed in the petition, which shall remain posted for a period of thirty (30) days.

§ 53.7 Challenges.

Once an official filing has been made, the local Bureau official shall have copies made of the petition and its signatures, and shall keep these copies at the agency or field office for fifteen (15) days, during which time they shall be available for examination by authorized voters of the tribe upon request. During this 15-day period challenges of signatures may be filed with the local Bureau official. Challenges will be considered on the following grounds: (a) Forgery of signatures; (b) lack of proper qualifications of a signer. No challenge will be considered which is not accompanied by supporting evidence in writing. In event an individual's name appears on a petition more than once, all but one of the names shall be stricken.

§ 53.8 Action on the petition.

Within thirty (30) days after the official filing date, the local Bureau official shall forward to the Commissioner through the Area Director, or directly to the Commissioner in the case of a tribe not under the administrative jurisdiction of an Area Director, the original of the petition and its accompanying signatures, together with his recommendations concerning challenges, and his conclusions concerning (a) the validity of the signatures; (b) the adequacy of the number of signatures; (c) the propriety of the petitioning procedure. The Commissioner shall within forty-five (45) days after the official filing date, decide each challenge and the sufficiency of the petition and announce whether an election shall be called. In the event he decides that the petitioning action for any reason is insufficient for the calling of an election, he shall inform the spokesman for the petitioners and the governing body of the tribe of that fact and the basis of his decision; in the event he decides that the petitioning action does warrant the calling of an election, he shall so inform the spokesman for the petitioners and the governing body of the tribe concerned. His decision in such matters shall be final. The procedures for conducting the election, as well as the date for the election, will be determined in accordance with pertinent directives.

PART 54—PROCEDURES FOR ESTABLISHING THAT AN AMERICAN INDIAN GROUP EXISTS AS AN INDIAN TRIBE

Sec.
54.1 Definitions.
54.2 Purpose.
54.3 Scope.
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54.5 Where to file.
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54.7 Form and content of petition.
54.8 Notice of receipt of petition.
54.9 Processing the petition.
54.10 Reconsideration and final action.
54.11 Implementation of decisions.

AUTHORITY: 5 U.S.C. 301; and sections 463 and 465 of the revised statutes 25 U.S.C. 2 and 9; and 230 DM 1 and 2.

SOURCE: 43 FR 39361, Sept. 5, 1978, unless otherwise noted.

§ 54.1 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Assistant Secretary" means the Assistant Secretary—Indian Affairs, or his authorized representative.

(c) "Department" means the Department of the Interior.

(d) "Bureau" means the Bureau of Indian Affairs.

(e) "Area Office" means the Bureau of Indian Affairs Area Office.

(f) "Indian tribe," also referred to herein as "tribe," means any Indian group within the continental United States that the Secretary of Interior acknowledges to be an Indian tribe.

(g) "Indian group" or "group" means any Indian aggregation within the continental United States that the Secretary of the Interior does not acknowledge to be an Indian tribe.

(h) "Petitioner" means any entity which has submitted a petition to the Secretary requesting acknowledgement that it is an Indian tribe.

(i) "Autonomous" means having a separate tribal council, internal process, or other organizational mechanism which the tribe has used as its own means of making tribal decisions independent of the control of any other Indian governing entity. Autonomous must be understood in the context of the Indian culture and social organization of that tribe.

(j) "Member of an Indian group" means an individual who is recognized by an Indian group as meeting its membership criteria and who consents to being listed as a member of that group.

(k) "Member of an Indian tribe" means an individual who meets the membership requirements of the tribe as set forth in its governing document or is recognized collectively by those persons comprising the tribal governing body, and has continuously maintained tribal relations with the tribe or is listed on the tribal rolls of that tribe as a member, if such rolls are kept.

(l) "Historically", "historical" or "history" means dating back to the earliest documented contact between the aboriginal tribe from which the petitioners descended and citizens or officials of the United States, colonial or territorial governments, or if relevant, citizens and officials of foreign governments from which the United States acquired territory.

(m) "Continuously" means extending from generation to generation throughout the tribe's history essentially without interruption.

(n) "Indigenous" means native to the continental United States in that at least part of the tribe's aboriginal range extended into what is now the continental United States.

(o) "Community" or "specific area" means any people living within such a reasonable proximity as to allow group interaction and a maintenance of tribal relations.

(p) "Other party" means any person or organization, other than the petitioner who submits comments or evidence in support of or in opposition to a petition.

§ 54.2 Purpose.

The purpose of this part is to establish a departmental procedure and policy for acknowledging that certain American Indian tribes exist. Such acknowledgment of tribal existence by the Department is a prerequisite to the protection, services, and benefits from the Federal Government available to Indian tribes. Such acknowledgment shall also mean that the tribe is entitled to the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their status as Indian tribes as well as the responsibilities and obligations of such tribes. Acknowledgment shall subject the Indian tribe to the same authority of Congress and the United States to which other federally acknowledged tribes are subjected.

§ 54.3 Scope.

(a) This part is intended to cover only those American Indian groups indigenous to the continental United States which are ethnically and culturally identifiable, but which are not currently acknowledged as Indian tribes by the Department. It is intended to apply to groups which can establish a substantially continuous tribal existence and which have functioned as autonomous entities throughout history until the present.

(b) This part does not apply to Indian tribes, organized bands, pueblos or communities which are already acknowledged as such and are receiving services from the Bureau of Indian Affairs.

(c) This part is not intended to apply to associations, organizations, corporations or groups of any character, formed in recent times; provided that a group which meets the criteria in § 54.7(a)-(g) has recently incorporated or otherwise formalized its existing autonomous process will have no bearing on the Assistant Secretary's final decision.

(d) Nor is this part intended to apply to splinter groups, political factions, communities or groups of any character which separate from the main body of a tribe currently acknowledged as being an Indian tribe by the Department, unless it can be clearly established that the group has functioned throughout history until the present as an autonomous Indian tribal entity.

(e) Further, this part does not apply to groups which are, or the members of which are, subject to congressional legislation terminating or forbidding the Federal relationship.

§ 54.4 Who may file.

Any Indian group in the continental United States which believes it should

be acknowledged as an Indian tribe, and can satisfy the criteria in section 54.7, may submit a petition requesting that the Secretary acknowledge the group's existence as an Indian tribe.

§ 54.5 Where to file.

A petition requesting the acknowledgment that an Indian group exists as an Indian tribe shall be filed with the Assistant Secretary—Indian Affairs, Department of the Interior, 18th and "C" Streets NW., Washington, D.C. 20245. Attention: Federal acknowledgment project.

§ 54.6 Duties of the Department.

(a) The Department shall assume the responsibility to contact, within a twelve-month period following the enactment of these regulations, all Indian groups known to the Department in the continental United States whose existence has not been previously acknowledged by the Department. Included specifically shall be those listed in chapter 11 of the American Indian Policy Review Commission final report, volume one, May 17, 1977. The Department shall inform all such groups of the opportunity to petition for an acknowledgment of tribal existence by the Federal Government.

(b) The Secretary shall publish in the FEDERAL REGISTER within 90 days after effective date of these regulations, a list of all Indian tribes which are recognized and receiving services from the Bureau of Indian Affairs. Such list shall be updated and published annually in the FEDERAL REGISTER.

(c) Within 90 days after the effective date of the final regulations, the Secretary will have available suggested guidelines for the format of petitions, including general suggestions and guidelines on where and how to research for required information. The Department's example of petition format, while preferable, shall not preclude the use of any other format.

(d) The Department shall, upon request, provide suggestions and advice to researchers representing a petitioner for their research into the petitioner's historical background and Indian identity. The Department shall not be responsible for the actual research on behalf of the petitioner.

§ 54.7 Form and content of the petition.

The petition may be in any readable form which clearly indicates that it is a petition requesting the Secretary to acknowledge tribal existence. All the criteria in paragraphs (a)-(g) of this section are mandatory in order for tribal existence to be acknowledged and must be included in the petition.

(a) A statement of facts establishing that the petitioner has been identified from historical times until the present on a substantially continuous basis, as "American Indian," or "aboriginal." A petitioner shall not fail to satisfy any criteria herein merely because of fluctuations of tribal activity during various years. Evidence to be relied upon in determining the group's substantically continuous Indian identity shall include one or more of the following:

(1) Repeated identification by Federal authorities;

(2) Longstanding relationships with State governments based on identification of the group as Indian;

(3) Repeated dealings with a county, parish, or other local government in a relationship based on the group's Indian identity;

(4) Identification as an Indian entity by records in courthouses, churches, or schools;

(5) Identification as an Indian entity by anthropologists, historians, or other scholars;

(6) Repeated identification as an Indian entity in newspapers and books;

(7) Repeated identification and dealings as an Indian entity with recognized Indian tribes or national Indian organizations.

(b) Evidence that a substantial portion of the petitioning group inhabits a specific area or lives in a community viewed as American Indian and distinct from other populations in the area, and that its members are descendants of an Indian tribe which historically inhabited a specific area.

(c) A statement of facts which establishes that the petitioner has maintained tribal political influence or other authority over its members as

an autonomous entity throughout history until the present.

(d) A copy of the group's present governing document, or in the absence of a written document, a statement describing in full the membership criteria and the procedures through which the group currently governs its affairs and its members.

(e) A list of all known current members of the group and a copy of each available former list of members based on the tribe's own defined criteria. The membership must consist of individuals who have established, using evidence acceptable to the Secretary, descendancy from a tribe which existed historically or from historical tribes which combined and functioned as a single autonomous entity. Evidence acceptable to the Secretary of tribal membership for this purpose includes but is not limited to:

(1) Descendancy rolls prepared by the Secretary for the petitioner for purposes of distributing claims money, providing allotments, or other purposes;

(2) State, Federal, or other official records or evidence identifying present members or ancestors of present members as being an Indian descendant and a member of the petitioning group;

(3) Church, school, and other similar enrollment records indicating the person as being a member of the petitioning entity;

(4) Affidavits of recognition by tribal elders, leaders, or the tribal governing body, as being an Indian descendant of the tribe and a member of the petitioning entity;

(5) Other records or evidence identifying the person as a member of the petitioning entity.

(f) The membership of the petitioning group is composed principally of persons who are not members of any other North American Indian tribe.

(g) The petitioner is not, nor are its members, the subject of congressional legislation which has expressly terminated or forbidden the Federal relationship.

§ 54.8 Notice of receipt of petition.

(a) Within 30 days after receiving a petition, the Assistant Secretary shall send an acknowledgment of receipt, in writing, to the petitioner, and shall have published in the FEDERAL REGISTER a notice of such receipt including the name and location, and mailing address of the petitioner and other such information that will identify the entity submitting the petition and the date it was received. The notice shall also indicate where a copy of the petition may be examined.

(b) Groups with petitions on file with the Bureau on the effective date of these regulations shall be notified within 90 days from the effective date that their petition is on file. Notice of that fact, including the information required in paragraph (a) of this section, shall be published in the FEDERAL REGISTER. All petitions on file on the effective date will be returned to the petitioner with guidelines as specified in § 54.6(c) in order to give the petitioner an opportunity to review, revise, or supplement the petition. The return of the petition will not affect the priority established by the initial filing.

(c) The Assistant Secretary shall also notify, in writing, the Governor and attorney general of any State in which a petitioner resides.

(d) The Assistant Secretary shall also cause to be published the notice of receipt of the petition in a major newspaper of general circulation in the town or city nearest to the petitioner. The notice will include, in addition to the information in section (a) of this part, notice of opportunity for other parties to submit factual or legal arguments in support of or in opposition to the petition. Such submissions shall be provided to the petitioner upon receipt by the Federal acknowledgement staff. The petitioner shall be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

§ 54.9 Processing the petition.

(a) Upon receipt of a petition, the Assistant Secretary shall cause a review to be conducted to determine whether the petitioner is entitled to be acknowledged as an Indian tribe. The review shall include consideration of the petition and supporting evi-

dence, and the factual statements contained therein. The Assistant Secretary may also initiate other research by his staff, for any purpose relative to analyzing the petition and obtaining additional information about the petitioner's status, and may consider any evidence which may be submitted by other parties.

(b) Prior to actual consideration of the petition, the Assistant Secretary shall notify the petitioner of any obvious deficiencies, or significant omissions, that are apparent upon an initial review, and provide the petitioner with an opportunity to withdraw the petition for further work or to submit additional information or a clarification.

(c) Petitions shall be considered on a first come, first serve basis determined by the date of original filing with the Department. The Federal acknowledgement project staff shall establish a priority register including those petitions already pending before the Department.

(d) The petitioner and other parties submitting comments on the petition shall be notified when the petition comes under active consideration. They shall also be notified who is the primary Bureau staff member reviewing the petition, his backup, and supervisor. Such notice shall also include the office address and telephone number of the primary staff member.

(e) A petitioning group may, at its option and upon written request, withdraw its petition prior to publication by the Assistant Secretary of his finding in the FEDERAL REGISTER and, may if it so desires, file an entirely new petition. Such petitioners shall not lose their priority date by withdrawing and resubmitting their petitions later, provided the time periods in paragraph (f) of this section shall begin upon active consideration of the resubmitted petition.

(f) Within 1 year after notifying the petitioner that active consideration of the petition has begun, the Assistant Secretary shall publish his proposed findings in the FEDERAL REGISTER. The Assistant Secretary may extend that period up to an additional 180 days upon a showing of due cause to the petitioner. In addition to the proposed findings, the Assistant Secretary shall prepare a report which shall summarize the evidence for the proposed decision. Copies of such report shall be available for the petitioner and other parties upon written request.

(g) Upon publication of the proposed findings, any individual or organization wishing to challenge the proposed findings shall have a 120-day response period to present factual or legal arguments and evidence to rebut the evidence relied upon.

(h) After consideration of the written arguments and evidence rebutting the proposed findings, the Assistant Secretary shall make a determination regarding the petitioner's status, a summary of which shall be published in the FEDERAL REGISTER within 60 days from the expiration of the response period. The determination will become effective in 60 days from publication unless earlier withdrawn pursuant to § 54.10.

(i) The Assistant Secretary shall acknowledge the existence of the petitioner as an Indian tribe when it is determined that the group satisfies the criteria in § 54.7.

(j) The Assistant Secretary shall refuse to acknowledge that a petitioner is an Indian tribe if it fails to satisfy the criteria in § 54.7. In the event the Assistant Secretary refuses to acknowledge the eligibility of a petitioning group, he shall analyze and foward to the petitioner other options, if any, under which application for services and other benefits may be made.

§ 54.10 Reconsideration and final action.

(a) The Assistant Secretary's decision shall be final for the Department unless the Secretary requests him to reconsider within 60 days of such publication. If the Secretary recommends reconsideration, the Assistant Secretary shall consult with the Secretary, review his initial determination, and issue a reconsidered decision within 60 days which shall be final and effective upon publication.

(b) The Secretary in his consideration of the Assistant Secretary's decision may review any information available to him, whether formally part of the record or not; where reliance is placed on information not of record,

such information shall be identified as to source and nature, and inserted in the record.

(c) The Secretary may request reconsideration of any decision by the Assistant Secretary but shall request reconsideration of any decision, which in his opinion:

(1) Would be changed by significant new evidence which he has received subsequent to the publication of the decision; or

(2) A substantial portion of the evidence relied on was unreliable or was of little probative value; or

(3) The petitioner's or the Bureau's research appears inadequate or incomplete in some material respect.

(d) Any notice which by the terms of these regulations must be published in the FEDERAL REGISTER, shall also be mailed to the petitioner, the Governors and attorney generals of the States involved, and to other parties which have commented on the proposed findings.

§ 54.11 Implementation of decisions.

(a) Upon final determination that the petitioner is an Indian tribe, the tribe shall be eligible for services and benefits from the Federal Government available to other federally recognized tribes and entitled to the privileges and immunities available to other federally recognized tribes by virtue of their status as Indian tribes with a government-to-government relationship to the United States as well as having the responsibilities and obligations of such tribes. Acknowledgment shall subject such Indian tribes to the same authority of Congress and the United States to which other federally acknowledged tribes are subject.

(b) While the newly recognized tribe shall be eligible for benefits and services, acknowledgment of tribal existence will not create an immediate entitlement to existing Bureau of Indian Affairs programs. Such programs shall become available upon appropriation of funds by Congress. Requests for appropriations shall follow a determination of the needs of the newly recognized tribe.

(c) Within 6 months after acknowledgment that the petitioner exists as an Indian tribe, the appropriate Area Office shall consult and develop in cooperation with the group, and forward to the Assistant Secretary, a determination of needs and a recommended budget required to serve the newly acknowledged tribe. The recommended budget will be considered along with other recommendations by the Assistant Secretary in the usual budget-request process.

PART 55—ORGANIZATION OF THE YUROK TRIBE—VOTING FOR TRIBAL INTERIM GOVERNING COMMITTEE

Sec.

55.1 Definitions.
55.2 Purpose.
55.3 Qualifications for voting.
55.4 Preparation and posting of initial voters list.
55.5 Appeals.
55.6 Final voters list.

AUTHORITY: 5 U.S.C. 301, R. S. § 463 and 465, 43 U.S.C. 1457, 25 U.S.C. 2 and 9, and Reorganization Plan No. 3 of 1950 (64 Stat. 1262).

SOURCE: 44 FR 24539, Apr. 25, 1979, unless otherwise noted.

§ 55.1 Definitions.

(a) "Voters" means persons eligible to participate in the nomination and election of an interim Yurok tribal governing committee.

(b) "Interim Yurok tribal governing committee" means a committee of persons nominated from and by the voters and elected by the voters to serve as the temporary governing body of the Yurok Tribe, with special responsibility for drafting a tribal constitution for adoption by the tribe and approval by the Secretary of the Interior.

(c) "Adult" means a person 18 years of age or older.

(d) "Reservation" means the Hoopa Valley Indian Reservation, as extended.

(e) "Living" means born on or prior to and living on the date specified.

(f) "Secretary" means the Secretary of the Interior or his authorized representative.

(g) "Director" means the Area Director, Bureau of Indian Affairs, Sacramento Area Office, or his authorized representative.

§ 55.2 Purpose.

The purpose of these regulations is to establish qualifications for voting and procedures for preparing a list of voters to elect an interim Yurok tribal governing committee.

§ 55.3 Qualifications for voting.

(a) Living adults whose names appear on one of the following rolls or lists shall be eligible to participate in the nomination and election of the Yurok interim tribal governing committee:

(1) An official census roll of the Hoopa Valley Indian Reservation, including the Square, Extension and/or Strip; or

(2) The list of plaintiffs or intervenors in *Jessie Short, et al.*, v. *United States*, No. 102-63, in the United States Court of Claims; or

(3) The list of plaintiffs in *Charlene Ackley, et al.*, v. *United States*, No. 460-78 in the United States Court of Claims.

(b) Persons who are enrolled as members of the Hoopa Valley Tribe shall not be entitled to be included on the voting list.

§ 55.4 Preparation and posting of initial voters list.

The Director shall review the lists specified in § 55.3(a) and compile an initial voters list comprised of the names of all adults found by him to meet the criteria specified in § 55.3. Upon completion the initial voters list shall be available for inspection. The list shall be posted in all Bureau of Indian Affairs field offices, and in Post Offices and other places on or near the Hoopa Valley Indian Reservation where the Indian population congregates. The Area Director shall publicize the posting of the list and the locations where it may be reviewed and provide copies upon request.

§ 55.5 Appeals.

(a) Any person not included on the initial voters list who believes he is entitled to vote may appeal to have his name included on the voters list.

(b) An appeal shall be in writing and must include a statement of the reason for the appeal. An appeal must be filed before the close of business on the 30th day after the date the initial voters list is posted. The appeal shall be sent to the Area Director, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825, and shall be considered filed as of the date received in that office. Appeals received after the 30-day appeal period shall be denied as untimely.

(c) Upon receipt of an appeal under paragraph (b) of this section, the Director shall examine it. If he finds that the appeal establishes that the appellant is eligible to vote the Director shall add the appellant's name to the voters list and so notify the appellant by letter. If the Director is not satisfied that the appellant is eligible to vote, the appeal and all related documents shall be forwarded to the Secretary of the Interior for a final determination. The appellant shall be advised in writing of the action taken on his appeal.

§ 55.6 Final voters list.

Upon completion of review and determination of appeals a final voters list containing the names of all persons found eligible to vote shall be prepared and made available for use in conducting the election of an interim Yurok tribal governing committee.

PART 55a—ELECTION OF INTERIM YUROK GOVERNING COMMITTEE; PROCEDURES FOR CONDUCT OF ELECTION AND DUTIES OF INTERIM COMMITTEE

Sec.

55a.1 Definitions.
55a.2 Purpose.
55a.3 Nomination of candidates.
55a.4 Conduct of the election.
55a.5 Election protests.
55a.6 First meeting of interim committee.
55a.7 Removal from office.
55a.8 Vacancies.
55a.9 Duties and responsibilities of committee.
55a.10 Tenure.

AUTHORITY: 5 U.S.C. 301, R.S. 463 and 465, 43 U.S.C. 1457, 25 U.S.C. 2 and 9, and Reorganization Plan No. 3 of 1950 (64 Stat. 1262).

SOURCE: 44 FR 46270, Aug. 7, 1979, unless otherwise noted.

§ 55a.1 Definitions.

As used in this part:

(a) "Voters" means those persons who are at least 18 years of age and who otherwise meet the qualifications set forth in 25 CFR 55.3. Such individuals are eligible to participate in the nomination and election of an interim Yurok tribal governing committee.

(b) "Petition" means the form prepared by the Sacramento Area Director to be used by the voters to nominate candidates for the interim Yurok tribal governing committee.

(c) "Petition Filing Deadline" means the thirtieth day following the date these regulations become effective.

(d) "Candidate" means a person who receives at least 15 valid signatures on a nominating petition to cause his or her name to be placed on a ballot for election to the committee.

(e) "Interim Yurok Tribal Governing Committee" means an eight-member committee of persons nominated from and by the voters and elected by the voters to serve as the temporary governing body of the Yurok Tribe, with those duties and powers described in this part.

(f) "Election Date" means the deadline established by the Area Director for receipt of ballots.

(g) "Area Director" means the Area Director, Bureau of Indian Affairs, Sacramento Area Office, or his authorized representative.

(h) "Superintendent" means the officer in charge of the Hoopa Agency, Bureau of Indian Affairs, or his authorized representative.

§ 55a.2 Purpose.

The purpose of these regulations is to establish procedures for conducting an election to choose an interim Yurok tribal governing committee and to outline its duties, powers and tenure, once it is elected.

§ 55a.3 Nomination of candidates.

(a) The Area Director shall prepare a petition form to be used by the voters of the Yurok Tribe to nominate candidates to be placed on the ballot. Each petition must be signed by at least 15 persons whose names appear on the voters list prepared pursuant to 25 CFR 55.6.

(b) All nominating petitions shall be received by the Area Director no later than the petition filing deadline. Nominating petitions received after that date by the Area Director will not be counted.

§ 55a.4 Conduct of the election.

(a) The Area Director shall cause ballots to be prepared listing those candidates whose nominating petitions are determined to be valid. The Area Director shall mail ballots to those on the voters list who furnish the Area Director with a current address. Ballots shall be sent and received only through the U.S. Postal Service. Together with the ballot, there shall be an inner envelope bearing on the outside the words "Yurok Ballot", a preaddressed outer envelope and a certificate in form as follows:

I (Name) ———— hereby certify that I am an eligible voter whose name appears on the Yurok Voters list: That I will be 18 years of age or older on the election date, and am entitled to vote in the election to be held on (date) ————. I further certify that I marked the enclosed ballot in secret. (Signed) ————

(b) Each voter wishing to vote, shall mark the ballot provided and mail it to the Sacramento Area Director. Ballots received after the election date shall not be counted.

(c) The Area Director shall then cause the opening of the ballots, counting of the votes, posting of the results and the issuing of an election certificate.

(d) Each candidate, or a representative he or she chooses, shall have the right to be present to observe the counting of the ballots. The eight candidates receiving the highest number of votes cast will be certified as constituting the interim Yurok tribal governing committee. Tie votes shall be decided by the flip of a coin.

§ 55a.5 Election protests.

(a) Any person whose name appears on the Yurok voters list may protest the manner in which the election was conducted by filing a written statement to be received by the Sacramento Area Director within five days fol-

lowing the date of election results are certified. The Area Director shall review all protests and promptly respond to each one in writing.

(b) Any person whose protest is denied may appeal to the Area Director's denial directly to the Commissioner of Indian Affairs, who shall decide the protest finally for the Department and take whatever action, if any, is appropriate.

(c) In order to be considered, any appeal of the Area Director's decision must be in writing, must state the complete basis for the appeal, and be received by the Commissioner within 7 days of receipt of the Area Director's decision.

§ 55a.6 First meeting of interim committee.

As soon as possible following the protest period, the Superintendent shall call and conduct a meeting of the successful candidates to swear them into office. At that session, the committee shall be given the opportunity to achieve its internal organization by electing from its own number, a chairman, vice chairman, secretary and such other officers deemed necessary.

§ 55a.7 Removal from office.

A committee member may be removed from office for cause by six committee members voting in favor of removal after the accused has been given at least 10 days written notice of the charges and an opportunity to respond to the charges by facing his or her accusers at a meeting held for that purpose.

§ 55a.8 Vacancies.

Vacancies resulting from removal, death or resignation shall be filled by the person who received the next highest number of votes after the first eight in the election of the interim committee. Such person shall serve for the remainder of that term of office unless earlier removed.

§ 55a.9 Duties and responsibilities of committee.

The interim Yurok tribal governing committee shall have only the following duties, responsibilities and powers:

(a) To draft a proposed constitution as top priority to be presented to the Secretary of the Interior within one year following the initial election of the interim governing committee. If such proposal can be approved by the Secretary, he shall authorize an election to permit the Yurok voters to adopt or reject the proposed governing document.

(b) To enter into contracts and grants with the Bureau of Indian Affairs under the authority of Pub. L. 93-638.

(c) To confirm judicial appointments in accordance with 25 CFR 11.3.

(d) To adopt such procedural rules as may be required for the orderly conduct of business.

(e) To exercise such other duties and powers as the Secretary may from time to time delegate it.

(f) To make available for review by the eligible voters, at reasonable times, the minutes and records of the committee.

§ 55a.10 Tenure.

The committee members shall remain in office until their successors are duly elected under the terms of a constitution that has been adopted by the Yurok voters and approved by the Secretary of the Interior, but in no event shall they remain in office longer than two years from the date of the interim committee's election.

PART 60—USE OR DISTRIBUTION OF INDIAN JUDGMENT FUNDS

Sec.

60.1 Definitions.
60.2 Purpose.
60.3 Time limits.
60.4 Conduct of hearings of record.
60.5 Submittal of proposed plan by Secretary.
60.6 Extension of period for submitting plans.
60.7 Submittal of proposed legislation by Secretary.
60.8 Enrollment aspects of plans.
60.9 Programming aspects of plans.
60.10 Per capita payment aspects of plans and protection of funds accruing to minors, legal incompetents and deceased beneficiaries.
60.11 Investment of judgment funds.
60.12 Insuring the proper performance of approved plans.

AUTHORITY: 5 U.S.C. 301; 87 Stat. 466, 467, 468.

SOURCE: 39 FR 1835, Jan. 15, 1974, unless otherwise noted.

§ 60.1 Definitions.

As used in this Part 60, terms shall have the meanings set forth in this section.

(a) "Act" means the Act of October 19, 1973 (P.L. 93-134; 87 Stat. 466, 467, 468).

(b) "Secretary" means the Secretary of the Interior or his authorized representative.

(c) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(d) "Area Director" means the Area Director or his equivalent of any one of the Area Offices of the Bureau of Indian Affairs or his authorized representative.

(e) "Superintendent" means the Superintendent or Officer in Charge of any one of the Agency Offices or other local offices of the Bureau of Indian Affairs or his authorized representative.

(f) "Congressional Committees" means the Committees on Interior and Insular Affairs of the Senate and House of Representatives of the United States.

(g) "Indian tribe or group" means any Indian tribe, nation, band, pueblo, community or identifiable group of Indians, or Alaska Native entity.

(h) "Tribal governing body" means, as recognized by the Secretary, the governing body of a formally organized or recognized tribe or group; the governing body of any informally organized tribe or group, the governing body of a formally organized Alaska Native entity or recognized tribe in Oklahoma, and for the purposes of the Act the recognized spokesmen or representatives of any descendant group.

(i) "Plan" means the document submitted by the Secretary, together with all pertinent records, for the use or distribution of judgment funds, to the Congressional Committees.

(j) "Enrollment" means that aspect of a plan which pertains to making or bringing current a roll of members of an organized, reservation-based tribe with membership criteria approved or accepted by the Secretary, a roll of members of an organized or recognized entity in Oklahoma, or Alaska or elsewhere, or a roll prepared for the purpose of making per capita payments for judgments awarded by the Indian Claims Commission or United States Court of Claims; or which pertains to using an historical roll or records of names, including tribal rolls closed and made final, for research or other purposes.

(k) "Program" means that aspect of a plan which pertains to using part or all of the judgment funds for tribal social and economic development projects.

(l) "Per capita payment" means that aspect of a plan which pertains to the individualization of the judgment funds in the form of shares to tribal members or to individual descendants.

(m) "Use or distribution" means any utilization or disposition of the judgment funds, including programing, per capita payments, or a combination thereof.

(n) "Individual beneficiary" means a tribal member or any individual descendant, found by the Secretary to be eligible to participate in a plan, who was born on or prior to, and is living on, the approval date of the plan.

(o) "Approval date" means the date that a plan is approved by the Congress. Except for a plan disapproved by either House, the approval date of a plan shall be the sixtieth (60) day after formal submittal of a plan by the Secretary to the Congressional Committees, excluding days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three (3) calendar days to a day certain. In the event a proposed plan is disapproved by either House, or in the event the Secretary is unable to submit a plan and therefore proposes legislation, the approval date shall be the date of the enabling legislation for the disposition of the judgment funds.

(p) "Minor" is an individual beneficiary who is eligible to participate in a per capita payment and who has not reached the age of eighteen (18) years.

(q) "Legal incompetent" is an individual beneficiary eligible to participate in a per capita payment and who

has been declared to be under a legal disability, other than being a minor, by a court of competent jurisdiction, including tribal courts.

(r) "Attorney fees and litigation expenses" means all fees and expenses incurred in litigating and processing tribal claims before the Indian Claims Commission or the United States Court of Claims.

§ 60.2 Purpose.

The regulations in this part govern the preparation of proposed plans for the use or distribution, pursuant to the Act, of all judgment funds awarded from the date of the Act to Indian tribes and groups by the Indian Claims Commission or the United States Court of Claims, excepting any tribe or group whose trust relationship with the Federal Government has been terminated and for which there exists legislation authorizing the disposition of its judgment funds; and of all funds deriving from judgments entered prior to the date of the Act for which there has been no enabling legislation.

§ 60.3 Time limits.

(a) The Secretary shall cause to begin as early as possible the necessary research to determine the identity of the ultimate or present day beneficiaries of judgments. Such research shall be done under the direction of the Commissioner of Indian Affairs. The affected tribes or groups shall be encouraged to submit pertinent data. All pertinent data, including cultural, political and historical material, and records, including membership, census and other rolls shall be considered. If more than one entity is determined to be eligible to participate in the use or distribution of the funds, the results of the research shall include a proposed formula for the division or apportionment of the judgment funds among or between the involved entities.

(b) The results of all research shall be provided to the governing bodies of all affected tribes and groups. The Area Director shall assist the affected tribe or group in arranging for preliminary sessions or meetings of the tribal governing body, or public meetings. The Area Director shall make a presentation of the results of the research and shall arrange for expertise of the Bureau of Indian Affairs to be available at these meetings to assist the tribe or group in developing a use or distribution proposal, bearing in mind that under the Act not less than twenty (20) per centum of the judgment funds, including investment income thereon, is to be used for tribal programs unless the Secretary determines that the particular circumstances of the affected Indian tribe clearly warrant otherwise.

§ 60.4 Conduct of hearings of record.

(a) As soon as appropriate after the tribal meetings have been held and the Commissioner has reviewed the tribal proposal(s), the Area Director, or such other official of the Department of the Interior as he shall designate to act for him, shall hold a hearing of record to receive testimony on the tribal proposal(s).

(b) The hearing shall be held after appropriate public notice beginning at least twenty (20) days prior to the date of such hearing, and after consultation with the governing body of the tribe or group regarding the date and location of the hearing, to obtain the testimony of members of the governing body and other representatives, spokesmen or members of the tribe or group on the proposal(s).

(c) All testimony at the hearing shall be transcribed and a transcript thereof shall be furnished to the Commissioner and the tribal governing body immediately subsequent to the hearing. Particular care shall be taken to insure that minority views are given full opportunity for expression either during the hearing or in the form of written communications by the date of the hearing.

(d) Whenever two or more tribes or groups are involved in the use or distribution of the judgment funds, including situations in which two or more Area Offices are concerned, every effort shall be made by the Area Director or Directors to arrange for a single hearing to be conducted at a time and location as convenient to the involved tribes and groups as possible. Should the tribes and groups not

reach agreement on such time or place, or on the number of entities to be represented at the hearing, the Commissioner, after considering the views of the affected tribes and groups, shall within twenty (20) days of receipt of such advice by the Area Director, designate a location and date for such hearing and invite the participation of all entities he considers to be involved and the Commissioner's decision shall be final.

§ 60.5 Submittal of proposed plan by Secretary.

Subsequent to the hearing of record, the Commissioner shall prepare all pertinent materials for the review of the Secretary. Pertinent materials shall include:

(a) The tribal use or distribution proposal or any alternate proposals;

(b) A copy of the transcript of the hearing of record;

(c) A statement on the hearing of record and other evidence reflecting the extent to which such proposal(s) meets the desires of the affected tribe or group, including minorities views;

(d) Copies of all pertinent resolutions and other communications or documents received from the affected tribe or group, including minorities;

(e) A copy of the tribal constitution and bylaws, or other organizational document, if any; a copy of the tribal enrollment ordinance, if any; and a statement as to the availability or status of the membership roll of the affected tribe or group;

(f) A statement reflecting the nature and results of the investment of the judgment funds as of thirty (30) days of the submittal of the proposed plan, including a statement concerning attorney fees and litigation expenses;

(g) A statement justifying any compromise proposal developed by the Commissioner in the event of the absence of agreement among any and all entities on the division or apportionment of the funds, should two or more entities be involved;

(h) And a statement regarding the feasibility of the proposed plan, including a timetable prepared in cooperation with the tribal governing body, for the implementation of programing and roll preparation.

Within one hundred and eighty (180) days of the appropriation of the judgment funds the Secretary shall submit a proposed plan, together with the pertinent materials described above, simultaneously to each of the Chairmen of the Congressional Committees, at the same time sending copies of the proposed plan and materials to the governing body of the affected tribe or group. The one hundred and eighty (180) day period shall begin on the date of the Act with respect to all judgments for which funds have been appropriated and for which enabling legislation has not been enacted.

§ 60.6 Extension of period for submitting plans.

An extension of the one hundred and eighty (180) day period, not to exceed ninety (90) days, may be requested by the Secretary or by the governing body of any affected tribe or group submitting such request to both Congressional Committees through the Secretary, and any such request shall be subject to the approval of both Congressional Committees.

§ 60.7 Submittal of proposed legislation by Secretary.

(a) Within thirty (30) calendar days after the date of a resolution by either House disapproving a plan, the Secretary shall simultaneously submit proposed legislation authorizing the use or distribution of the funds, together with a report thereon, to the Chairmen of both Congressional Committees, at the same time sending copies of the proposed legislation to the governing body of the affected tribe or group. Such proposed legislation shall be developed on the basis of further consultation with the affected tribe or group.

(b) In any instance in which the Secretary determines that circumstances are not conducive to the preparation and submission of a plan, he shall, after appropriate consultation with the affected tribe or group, submit proposed legislation within the 180-day period to both Congressional Committee simultaneously.

§ 60.8 Enrollment aspects of plans.

An approved plan that includes provisions for enrollment requiring formal adoption of enrollment rules and regulations shall be implemented through the publication of such rules and regulations in the FEDERAL REGISTER. Persons not members of organized or recognized tribes and who are not citizens of the United States shall not, unless otherwise provided by Congress, be eligible to participate in the use or distribution of judgment funds, excepting heirs or legatees of deceased individual beneficiaries.

§ 60.9 Programing aspects of plans.

In assessing any tribal programing proposal the Secretary shall consider all pertinent factors, including the following: the percentage of tribal members residing on or near the subject reservation, including former reservation areas in Oklahoma, or Alaska Native villages; the formal educational level and the general level of social and economic adjustment of such reservation residents; the nature of recent programing affecting the subject tribe or group and particularly the reservation residents; the needs and aspirations of any local Indian communities or districts within the reservation and the nature of organization of such local entities; the feasibility of the participation of tribal members not in residence on the reservation; the availability of funds for programing purposes derived from sources other than the subject judgment; and all other pertinent social and economic data developed to support any proposed program.

§ 60.10 Per capita payment aspects of plans and protection of funds accruing to minors, legal incompetents and deceased beneficiaries.

(a) The per capita shares of living competent adults shall be paid directly to them. The shares of minors, legal incompetents and deceased individual beneficiaries, enhanced by investment earnings, shall be held in individual Indian money (IIM) accounts unless otherwise provided as set out in this section. While held in IIM accounts, said shares shall be invested pursuant to 25 U.S.C. 162a and shall be the property of the minors or legal incompetents or the estates of the deceased individual beneficiaries to whom the per capita payments were made.

(b)(1) Unless otherwise provided in paragraph (b)(2) of this section, minors' per capita shares, until the minors attain the age of 18 years, shall be retained in individually segregated IIM accounts and handled as provided in § 104.4 of this chapter. Should it be determined that the funds are to be invested pursuant to a trust, minors who will have reached the age of 18 years within six months after the establishment of the trust shall have their funds retained at interest in IIM accounts and paid to them upon attaining their majority.

(2) A private trust for the minors' per capita shares may be established subject to the approval of the tribal governing body and the Secretary on the following conditions:

(i) The tribal governing body specifically requests the establishment of such trust, and the trust provides for segregated amounts to each individual minor, based on his per capita share, and

(ii) The trust agreement specifically provides that the investment policy to be followed is that of preserving the trust corpus and of obtaining the highest interest rates current money markets can safely provide. The trust agreement must further provide that maturity dates of investments cannot exceed the period of the trust and that only the following types of investment shall be made: United States Treasury obligations; Federal agency obligations; repurchase/resell agreements; United States Treasury bills; Bankers' acceptance, provided the assets of the issuing bank exceed $1 billion or the issuing bank pledges full collateral; Certificates of deposit, provided the assets of the issuing bank exceed $1 billion or the issuing bank pledges full collateral; Commercial paper, provided it is rated prime-2 by Moody or A-2 by Standard and Poor or is obligation of a company with outstanding unsecured debt rated Aa by Standard and Poor.

(c) The per capita shares of legal incompetents shall be held in IIM ac-

counts and administered pursuant to the provisions of § 104.5 of this chapter.

(d) The shares of deceased individual beneficiaries, plus all interest and investment income accruing thereto, shall be paid to their heirs and legatees upon their determination as provided in 43 CFR, PART 4, Subpart D.

(e) All per capita shares, including all interest and investment income accruing thereto, while they are held in trust under the provisions of this section, shall be exempt from Federal and State income taxes and shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act, as amended.

(f) All per capita shares or portions thereof, including all interest and investment income accruing thereto, which are not paid out but which remain unclaimed with the Federal Government shall be maintained separately and be enhanced by investment, and shall, unless otherwise provided in an effective plan or in enabling legislation, be subject to the provisions of the Act of September 22, 1961, 75 Stat. 584. No per capita share or portion thereof shall be transferred to the U.S. Treasury as "Monies Belonging to Individuals Whose Whereabouts are Unknown."

[41 FR 48735, Nov. 5, 1976]

§ 60.11 Investment of judgment funds.

As soon as possible after the appropriation of judgment funds and pending approval of a plan or the enactment of legislation authorizing the use or distribution of the funds, the Commissioner shall invest such funds pursuant to 25 U.S.C. 162a. Investments of judgment funds and of investment income therefrom will continue to be made by the Commissioner after the approval of a plan or enactment of use or distribution legislation to the extent funds remain available for investment under such plan or legislation, and provided that thereafter investments of judgment funds made available for tribal use are not undertaken by the tribe pursuant to authorizing law. Invested judgment funds, including investment income therefrom, shall be withdrawn from investment only as currently needed under approved plans or legislation authorizing the use or distribution of such funds.

§ 60.12 Insuring the proper performance of approved plans.

A timetable prepared in cooperation with the tribal governing body shall be included in the plan submitted by the Secretary for the implementation of all programing and enrollment aspects of a plan. At any time within one calendar year after the approval date of a plan, the Area Director shall report to the Commissioner on the status of the Implementation of the plan, including all enrollment and programing aspects, and thenceforth shall report to the Commissioner on an annual basis regarding any remaining or unfulfilled aspects of a plan. The Area Director shall include in his first and all subsequent annual reports a statement regarding the maintenance of the timetable, a full accounting of any per capita distribution, and the expenditure of all programing funds. The Commissioner shall report the deficient performance of any aspect of a plan to the Secretary, together with the corrective measures he has taken or intends to take.

PART 71—RECOGNITION OF ATTORNEYS AND AGENTS TO REPRESENT CLAIMANTS

Sec.

71.1 Employment of attorneys.
71.2 Employment by tribes or individual claimants.

CROSS REFERENCES: For law and order regulations on Indian reservations, see Part 11 of this chapter. For probate procedure, see Part 15 of this chapter. For regulations governing the admission of attorneys to practice before the Department of the Interior and the offices and bureaus thereof, see 43 CFR Part 1. For regulations governing the execution of attorney contracts with Indians, see Part 72 of this subchapter.

§ 71.1 Employment of attorneys.

(a) Indian tribes organized pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461-479), as amended, may employ legal counsel. The choice of counsel

and the fixing of fees are subject under 25 U.S.C. 476 to the approval of the Secretary of the Interior or his authorized representative.

(b) Attorneys may be employed by Indian tribes not organized under the Act of June 18, 1934, under contracts subject to approval under 25 U.S.C. 81 and the Reorganization Plan No. 3 of 1950, 5 U.S.C. 481, note, by the Secretary of the Interior or his authorized representative.

(c) Any action of the authorized representative of the Secretary of the Interior which approves, disapproves or conditionally approves a contract pursuant to paragraph (a) or (b) of this section shall be final.

(d) Practice of such attorneys before the Bureau of Indian Affairs and the Department of the Interior is subject to the requirements of 43 CFR 1.1-1.7.

(5 U.S.C. 301)

[27 FR 11548, Nov. 24, 1962]

§ 71.2 Employment by tribes or individual claimants.

All such attorneys or agents seeking approval of their employment by Indian tribes or desiring to represent individual claimants before the Indian Bureau shall be required to comply fully with the regulations of the Department promulgated September 27, 1917, governing admission to practice, and to take the oath of allegiance and to support the Constitution of the United States, as required by section 3478 of the United States Revised Statutes (31 U.S.C. 204).

(5 U.S.C. 301)

[22 FR 10538, Dec. 24, 1957]

PART 72—ATTORNEY CONTRACTS WITH INDIAN TRIBES

TRIBES ORGANIZED UNDER THE INDIAN REORGANIZATION ACT

Sec.

72.1 Contracts with organized tribes.
72.2 Admission to practice.
72.3 Tentative form of contract.
72.4 Report of Superintendent.
72.5 Fees and expenses.
72.6 Funds in Federal Treasury.

TRIBES NOT ORGANIZED UNDER THE INDIAN REORGANIZATION ACT

Sec.

72.7 Statutes governing.
72.8 Selection of counsel.
72.9 Record of council proceedings.
72.10 Resolution required.
72.11 Authentication of resolution.
72.12 Negotiation by tribal business committee.
72.13 Limitation of authority.
72.14 Employment by tribal business committees.
72.15 Vote by secret ballot.
72.16 Notice from the tribe.
72.17 Notice from attorneys.
72.18 Tentative form of contract.
72.19 Execution in quintuplicate.
72.20 Report of superintendent.
72.21 Copies of approved contracts.
72.22 Qualifications of attorneys.
72.24 Fees and expenses.
72.25 Invalid contracts.
72.26 Governing bodies without express authority to contract.

FIVE CIVILIZED TRIBES

72.30 Contents and approval of contracts.
72.31 Negotiation of contract.
72.32 Notice from the principal officer.
72.33 Notice from attorney.
72.34 Tentative form of contract.
72.35 Execution in quintuplet.

CROSS REFERENCE: For recognition of attorneys and agents to represent claimants, see Part 71 of this subchapter.

TRIBES ORGANIZED UNDER THE INDIAN REORGANIZATION ACT

AUTHORITY: §§ 72.1 to 72.6 issued under sec. 16, 48 Stat. 987; 5 U.S.C. 301; 25 U.S.C. 476.

§ 72.1 Contracts with organized tribes.

(a) Negotiation and execution of tribal attorney contracts with Indian tribes organized pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461-479), as amended, shall be in accordance with the provisions of the approved constitution or charter of the respective tribes.

(b) The Secretary of the Interior or his authorized representative is authorized to approve pursuant to 25 U.S.C. 476 the selection of counsel and the amount of fees and expenses to be paid under any such contract.

[27 FR 11548, Nov. 24, 1962]

§ 72.2 Admission to practice.

Attorneys employed by tribes organized under the Indian Reorganization Act, shall be required to be admitted to practice before the Interior Department and the bureaus thereof, under the provisions of the act of July 4, 1884 (23 Stat. 101; 5 U.S.C. 493).

[22 FR 10538, Dec. 24, 1957]

CROSS REFERENCE: For rules and regulations governing admission to practice before the Interior Department and the bureaus thereof, see 43 CFR Part 1.

§ 72.3 Tentative form of contract.

A tribal council or representative body having authority to employ legal counsel in behalf of an organized tribe, may, if it desires, obtain a tentative form of contract by written request directed to the office of any area director or agency superintendent, or to the Commissioner of Indian Affairs. Requests for forms should include a statement of the scope of the intended employment; that is, whether an attorney is desired for investigation and prosecution of tribal claims against the United States, or as a general legal counsel in connection with the ordinary business of the tribe, or specific problems on which legal advice is desired, or specific matters requiring representation in court or before committees of Congress and the departments of the Government. The period for which an attorney is desired should be stated.

[27 FR 11549, Nov. 24, 1962]

§ 72.4 Report of Superintendent.

Contracts executed by organized tribes should be transmitted to the Area Director by the Superintendent, with a report based upon references and independent inquiry concerning the qualifications of the attorney and his ability to perform the services required by the contract, and including the superintendent's recommendation with reference to approval of the contract.

[27 FR 11549, Nov. 24, 1962]

§ 72.5 Fees and expenses.

Funds held in the treasury of an organized tribe may be used by the tribe for payment of fees and expenses of an attorney. A contract providing for payment of fees and/or expenses should be accompanied by an appropriation act passed by the governing body of the tribe in accordance with the requirements of the tribal constitution or charter, appropriating sufficient tribal funds for payment of fees and/or expenses as provided by the contract. The amount of tribal funds held in the tribal treasury, not otherwise appropriated and available for payment of fees and expenses, should be stated.

[22 FR 10538, Dec. 24, 1957]

§ 72.6 Funds in Federal Treasury.

Under rulings of the Comptroller General and section 27 of the act of May 18, 1916 (39 Stat. 158; 25 U.S.C. 123), tribal funds held in the United States Treasury may not be used for payment of attorney fees and expenses in the absence of express authorization by Congress.

[22 FR 10538, Dec. 24, 1957]

TRIBES NOT ORGANIZED UNDER THE INDIAN REORGANIZATION ACT

AUTHORITY: §§ 72.7 to 72.26 issued under 5 U.S.C. 301. Interpret or apply R.S. 2103; 25 U.S.C. 81.

§ 72.7 Statutes governing.

The negotiation and execution of tribal attorney contracts with tribes not organized under the Indian Reorganization Act must be in strict accordance with the requirements of section 2103 of the Revised Statutes of the United States (25 U.S.C. 81).

[22 FR 10538, Dec. 24, 1957]

§ 72.8 Selection of counsel.

Except as stated in §§ 72.12-72.15 and 72.26, a tribal attorney or technical specialist and tribal delegates to execute a contract shall be selected by a general council or meeting of the tribe, to be called by the superintendent of the particular reservation.

[37 FR 10440, May 23, 1972]

§ 72.9 Record of council proceedings.

A report should be made of the proceedings of the council, certified to by

the Superintendent or his representative as correct, and a copy thereof should be sent to the Area Director with the contract.

[27 FR 11549, Nov. 24, 1962]

§ 72.10 Resolution required.

The selection of counsel and of tribal delegates to execute a contract in behalf of the tribe shall be set forth in a resolution or resolutions which shall be attached to and made a part of the contract.

[22 FR 10539, Dec. 24, 1957]

§ 72.11 Authentication of resolution.

The resolution shall be signed by the presiding officer of the general council, attested by the secretary of the general council, and certified by the superintendent.

[22 FR 10539, Dec. 24, 1957]

§ 72.12 Negotiation by tribal business committee.

A tribal business committee, advisory board, or other similar representative body having standing authority to act for and in behalf of the tribe in matters of importance, may, when it finds that there is a substantial need and demand for retention of tribal counsel, negotiate with an attorney or attorneys.

[22 FR 10539, Dec. 24, 1957]

§ 72.13 Limitation of authority.

The tribal business committee or other representative body, when proceeding under § 72.12 should carefully investigate, with the assistance of the superintendent if desired, the qualifications of available attorneys, bearing in mind the purpose for which counsel is desired and except as provided in § 72.14 shall carry on its negotiations with attorneys subject to the distinct understanding that final action on the selection and employment of counsel shall be had in a general council or meeting of the tribe or as otherwise provided under § 72.15, subject to approval by the Secretary of the Interior or his authorized representative as required by law.

[27 FR 11549, Nov. 24, 1962]

§ 72.14 Employment by tribal business committees.

In case the tribal business committee or board has specific authority from the tribe to employ tribal attorneys and to execute a contract for that purpose, the tribal business committee or board may negotiate with attorneys and enter into a contract subject to approval of the Secretary of the Interior or his authorized representative as provided by law.

[27 FR 11549, Nov. 24, 1962]

§ 72.15 Vote by secret ballot.

Those tribes accustomed to act on important tribal matters by secret ballot or by vote in district meetings, or in some other manner, may apply through their proper officers to the Area Director for permission to consider and act upon employment of tribal counsel in the manner preferred by the tribe rather than by a general council or meeting.

[27 FR 11549, Nov. 24, 1962]

§ 72.16 Notice from the tribe.

Notice of intention to negotiate with attorneys should be sent to the superintendent by the proper tribal officers, accompanied by a full statement concerning the need for retaining counsel, showing in detail the purposes for which an attorney is needed, the scope of his intended employment, and a reference to the tribal funds, if any, which the tribe believes should be made available for payment of counsel fees and expenses. The notice and statement should be transmitted to the Area Director by the Superintendent with the latter's report and recommendations.

[27 FR 11549, Nov. 24, 1962]

§ 72.17 Notice from attorneys.

Attorneys desiring to execute contracts with Indian tribes shall be required to give written notice directed through the superintendent to the Area Director in advance of all negotiations.

[27 FR 11549, Nov. 24, 1962]

§ 72.18 Tentative form of contract.

A tentative form of contract may be obtained from any agency office, area office, or the Commissioner of Indian Affairs. When the attorney or tribe proposing to execute a contract desires to make substantial changes in the tentative form, the proposed changes should be submitted through the superintendent to the Area Director for approval as to form prior to execution of a contract.

[27 FR 11549, Nov. 24, 1962]

§ 72.19 Execution in quintuplicate.

The contract should be executed in quintuplicate, and all copies should be transmitted by the superintendent to the Area Director.

[27 FR 11549, Nov. 24, 1962]

§ 72.20 Report of superintendent.

The superintendent should submit a report when transmitting the contract, setting forth the qualifications and general reputation of the attorney selected, based upon references and independent inquiry by the superintendent, and the superintendent's recommendation concerning approval of the contract.

[22 FR 10539, Dec. 24, 1957]

§ 72.21 Copies of approved contracts.

The original of all approved contracts will be retained by the Area Director with a copy to the tribal governing body, attorney, Superintendent and Commissioner. The Commissioner's copy should be completely supported by copies of the recommendation of the Superintendent or Officer in Charge, Regional Solicitor's or Field Solicitor's opinions, and any other pertinent data which will permit the records of the Commissioner's office to reflect the full current status of approved attorney contracts in each instance.

[27 FR 11549, Nov. 24, 1962]

§ 72.22 Qualifications of attorneys.

The person selected as attorney should be a reputable member of the bar, and fully competent to carry the case through the Court of Claims, and to the Supreme Court of the United States, if necessary.

[22 FR 10539, Dec. 24, 1957]

§ 72.24 Fees and expenses.

Under rulings of the Comptroller General and section 27 of the act of May 18, 1916 (39 Stat. 153; 25 U.S.C. 123), tribal funds held in the United States Treasury may not be used for payment of attorney fees and expenses, in the absence of express authorization by Congress. Unless congressional authority has been obtained for the use of tribal funds, the payment of attorney fees and expenses shall be contingent upon a recovery by the Indians in the matters or claims covered in the contract. In case congressional authority has been obtained for the use of tribal funds for attorney fees and expenses, the provisions of the contract concerning the payment of such fees and expenses should strictly conform to the provisions of the act authorizing the use of the funds.

[22 FR 10539, Dec. 24, 1957]

§ 72.25 Invalid contracts.

The following is especially pointed out. 25 U.S.C. 81 provides further that all contracts made in violation of that section shall be null and void. Under 25 U.S.C. 84 and Reorganization plan No. 3 of 1950, 5 U.S.C. 481 note, no assignment of any such contract shall be valid without the consent of the Secretary of the Interior or his authorized representative. 25 U.S.C. 85 declares that no contract with any individual Indian relating to tribal property shall have any validity unless the consent of the United States has previously been given thereto.

[25 FR 1689, Feb. 26, 1960]

§ 72.26 Governing bodies without express authority to contract.

In the following cases, the entity or spokesman officially recognized as having authority to act for a tribe may both negotiate and conclude contracts for the services of legal counsel pursuant to applicable provisions of this part:

(a) In the absence of tribal governing documents, or

(b) When such documents do not expressly authorize the governing body of a tribe to conclude such contracts and do not provide for calling a tribal meeting to authorize concluding such contracts pursuant to § 72.8, and convening a tribal general council is not deemed feasible.

[37 FR 10440, May 23, 1972]

FIVE CIVILIZED TRIBES

AUTHORITY: Secs. 72.30 through 72.35 issued under R.S. secs. 161, 463, 465 (5 U.S.C. 301; 25 U.S.C. 2, 9, 82a).

§ 72.30 Contents and approval of contracts.

All contracts for the services of legal counsel or technical specialists negotiated and executed with the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribes or Nations, also known as the Five Civilized Tribes, shall be in strict compliance with the requirements of section 2103 of the Revised Statutes of the United States (25 U.S.C. 81).

[37 FR 10440, May 23, 1972]

§ 72.31 Negotiation of contract.

That person or governing entity recognized as having authority to act for and in behalf of any one of the Five Civilized Tribes in matters of importance may, when it is found there is a substantial need and demand therefor, negotiate and contract for services of a tribal counsel or counsels and technical specialist or specialists, subject to the approval of the Secretary of the Interior or his authorized representative.

[37 FR 10440, May 23, 1972]

§ 72.32 Notice from the principal officer.

Notice of intention to negotiate with attorneys or with technical specialists shall be sent by the principal tribal officer to the Superintendent. Such notice shall be accompanied by a full statement concerning the need for retaining counsel or specialists, as the case may be, the purpose for which such assistance is needed and the scope of the intended employment. The notice and statement shall be transmitted to the Area Director by the Superintendent together with the latter's report and recommendations with respect to the approval of such contract.

[37 FR 10440, May 23, 1972]

§ 72.33 Notice from attorney.

Attorneys desiring to execute contracts with any one of the Five Civilized Tribes shall be required to give written notice to the Area Director through the Superintendent having jurisdiction over said tribe.

[37 FR 10440, May 23, 1972]

§ 72.34 Tentative form of contract.

The principal officer of any one of the Choctaw, Cherokee, Creek, Seminole, and Chickasaw Tribes may, if he desires, obtain a tentative form of contract by written application to the office of the appropriate Agency Superintendent. Requests for forms for an attorney contract should include a statement reciting whether the attorney is desired as a general legal counsel in connection with the business of the tribe or as counsel in respect to specific problems on which legal counsel is desired, or specific matters requiring representation in court or before committees of Congress and the Departments of Government. Requests for forms for technical service contracts should include a statement of the particular type of service required and the purpose for which it is needed. The anticipated term of each proposed contract should be stated.

[37 FR 10440, May 23, 1972]

§ 72.35 Execution in quintuplet.

The contract should be executed in quintuplet, and all copies of it shall be transmitted by the Superintendent to the Area Director.

[37 FR 10440, May 23, 1972]

PART 73—ELECTION OF OFFICERS OF THE OSAGE TRIBE

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AUTHORITY: Sec. 9, 34 Stat. 539, sec. 7, 45 Stat. 1478, 71 Stat. 471.

SOURCE: 23 FR 1948, Mar. 25, 1958; 23 FR 2026, Mar. 27, 1958, unless otherwise noted.

GENERAL

§ 73.1 Definitions.

As used in this part:

(a) The term "supervisor" means the tribal election official chosen and appointed by the Principal Chief or Assistant Principal Chief to act as chairman of the election board and shall in the absence of the supervisor denote the Assistant Supervisor.

§ 73.2 Statutory provisions.

Section 7 of the act of March 2, 1929 (45 Stat. 1481) provides in part as follows:

That there shall be a quadrennial election of officers of the Osage Tribe as follows: A principal chief, an assistant principal chief, and eight members of the Osage tribal council, to succeed the officers elected in the year 1928, said officers to be elected at a general election to be held in the town of Pawhuska, Oklahoma, on the first Monday in June 1930 and on the first Monday in June each four years thereafter, in the manner to be prescribed by the Commissioner of Indian Affairs, and said officers shall be elected for a period of four years commencing on the 1st day of July following said elections.* * *

ELIGIBILITY

§ 73.21 General.

Only members of the Osage Tribe who will be eighteen years of age or over on election day and whose names appear on the quarterly annuity roll at the Osage Agency as of the last quarterly payment immediately preceding the date of election will be entitled to hold office or vote for any tribal officers. Each such voter shall be entitled to cast one ballot and each ballot shall have exactly the same value as the voter's headright interest shown on the last quarterly annuity roll. Any fraction of a headright, however, shall be valued as to the first two decimals only unless such interest is less than one-hundredth of a share, then it shall have its full value.

(45 Stat. 1481)

[43 FR 8798, Mar. 3, 1978]

ELECTIONS

§ 73.30 Nominating conventions and petitions.

Conventions shall be held on or before the first Monday in April of the year in which a quadrennial election is held, and there shall be written reports of such conventions, duly certified by the secretary or presiding officer showing total number of qualified voters in attendance, together with the names of candidates nominated for the various offices: *Provided,* That at least 25 qualified voters shall have been in attendance at any such convention; also, names of any independent candidates nominated by petition of not less than 25 qualified voters, each signature to be witnessed by two persons, shall be filed with the supervisor not later than 5 p.m. on the first Monday in April of the year in which a quadrennial election is held in order that such names may be placed on the official ballot. No person shall be considered a candidate for tribal office unless and until the requirements of this section have been met.

[32 FR 10253, July 12, 1967]

§ 73.31 Applicability.

The manner of carrying out elections to be held under the act of June

28, 1906 (34 Stat. 539), as amended by the act of March 2, 1929 (45 Stat. 1478), as amended by the act of August 28, 1957 (71 Stat. 471), is covered in the regulations set forth in this part. The next election will be held on the first Monday in June 1958 and subsequent elections will be held on the first Monday in June each four years thereafter.

§ 73.32 Election Board.

The Principal Chief, or in his absence, the Assistant Principal Chief shall, not more than seventy-five days nor less than sixty-five days preceding the day appointed by law for the holding of an election of officers of the Osage Tribe, issue in the form and manner prescribed in § 73.37, an election notice and appoint an election board consisting of a Supervisor who shall be chairman, Assistant Supervisor, five judges, one of whom in addition to his regular duties shall act as interpreter, and five clerks, whose duties shall be to conduct the election as provided in the regulations in this part: *Provided further*, That the Superintendent on the recommendation of the election board may designate extra clerical assistants. Prior to the date of the election, the election board shall assemble and make necessary arrangements for the election in a building to be designated by the Superintendent of the Osage Agency as the polling site and make the necessary preparation for receiving prospective voters, for receiving absentee ballots, and see to it that voting booths are arranged to afford privacy. Members of the election board and any extra clerical assistants designated by the Superintendent under authority contained in this section, other than employees of the Osage Agency when duly appointed or designated as provided for in this part may be compensated for conducting each quadrennial election at rates to be fixed by the Osage Tribal Council. If a member of the election board desires to be relieved from duty for any cause, he shall notify the Principal Chief or in his absence the Assistant Principal Chief, in writing to that effect and the Principal Chief, or in his absence the Assistant Principal Chief shall designate someone else to serve as a member of the election board. The Supervisor, or in his absence the Assistant Supervisor, shall see that the rules prescribed for conducting the election are faithfully carried out. The ballots shall be handed out by a judge to the voters as they present themselves to vote, after being identified by a clerk who shall be supplied with a copy of the list of voters prepared pursuant to § 73.35. The judge before handing out a ballot shall remove the detachable portion. A judge shall receive the ballot after the voter has indicated his choice thereon by placing an "X" mark opposite the name of each candidate for whom he desires his vote counted and shall deposit same in the ballot box. The duties of the remaining judges in conjunction with the Supervisor will be to read the names on the ballot when requested so as to identify the candidates or furnish such other information as may be desired in that connection and also to assist prospective voters unable because of language difficulties or physical incapacity to cast votes for candidates of their choice, and to undertake such other duties as may be assigned by the Supervisor.

[27 FR 2458, Mar. 15, 1962]

§ 73.33 Watchers and challengers.

Any candidate or political party may name a person to act as watcher and challenger at any election provided for by the regulations in this part. Each watcher and challenger shall be appointed in writing by the candidate or political party he or she represents. The watchers and challengers shall have the right to be present in the polling place but outside the voting booths and to watch the election officials, the balloting, the call, the tally, and the recording of the result of the vote. It shall be the duty of the watcher to watch, listen, and observe the count for all candidates voted for to insist upon an honest and fair count but shall have no further authority than to have the election judges and clerks note or record any objections to the count and to challenge the result thereof. The challenger shall have the right to question any voter and his right to vote. Watchers shall not divulge or give out any intimation or in-

formation as to the count prior to announcement by the election board and shall be subject to the same rules governing the election board with regard to leaving and returning to the polling place. A watcher or challenger shall receive no compensation for his services.

[27 FR 2458, Mar. 15, 1962]

§ 73.35 List of voters.

The Superintendent of the Osage Agency shall compile a list of the voters of the Tribe who are qualified under § 73.21. Such list shall set forth only the name and last known address of each voter. The Superintendent shall furnish copies of the list to the Supervisor of the election board and shall post copies at the headquarters of the Osage Agency at Pawhuska, Okla., and such other places as the election board may determine to be appropriate. The compilation, posting and distribution of copies to the Supervisor of the election board shall be done as soon as possible after preparation of the last quarterly annuity roll preceding the election. Copies of the list shall also be made available to all qualified candidates for office and for the purpose of checking off the name of each voter as his ballot is cast and for determining, in the event of question, the right of any individual to vote.

[27 FR 2458, Mar. 15, 1962]

§ 73.36 Disputes on eligibility of voters.

(a) The election board shall fix a date not less than five days before the election at which time all complaints will be heard. The election board shall, at least three days before the date of election, determine any claim or challenge as to the right of any person to be listed on the roll of eligible voters.

(b) Any voter of the tribe shall have the right to challenge any person presenting himself to vote and it shall be the duty of the supervisor and a judge of the board to make such investigation then and there as they deem essential, and decide the question of whether or not a person is a listed voter.

§ 73.37 Election notices.

The election notice shall set forth the place, date and time for holding the election, qualification of voters, method of nominating candidates, and closing date for same, method of locating each name on the ballot and the names of each member of the election board. As soon as possible a copy of the notice of the election, after approval by the Superintendent of the Osage Agency, shall be mailed to each qualified voter at his last known address.

§ 73.38 Opening and closing of poll.

The poll shall remain open without intermission from 8 a.m. to 8 p.m. on the date of the election. When all else is in readiness for the opening of the poll the supervisor shall open the ballot box in view of the other election officers, shall turn same top down to show that no ballots are contained therein, and shall then lock the box and retain the key in his possession.

[32 FR 10253, July 12, 1967]

§ 73.39 Voters to announce name and residence.

Each voter shall upon presenting himself to vote announce to the clerk his name, and address.

§ 73.40 Ballots.

The Superintendent of the Osage Agency shall have ballots printed showing the name and the office for which each candidate has been nominated and also space for showing the value of the respective ballots. The Superintendent shall have recorded on a detachable portion of each ballot the name of the voter. The value of each voter's ballot shall be recorded on the principal portion of the respective ballots. Any faction or group has the right to nominate any candidate it chooses, in accordance with the regulations prescribed in this part. The names of such candidates shall be printed on the ballot in the manner set forth as follows:

(a) Under the heading, Principal Chief, with notation to vote for one, shall appear names of all candidates for that office. Under the heading, Assistant Chief, with notation to vote for

one, shall appear the names of all candidates for that office. Under the heading, Members of Council, with notation to vote for eight, shall appear names of all candidates for council. Names of candidates for office shall appear only once on ballot, regardless of the fact that they may have been nominated on more than one ticket. The order in which names of qualified candidates for office will be placed on the ballot shall be by lot method of drawing in a manner to be determined by the tribal council, and to be free from or regardless of party or factional affiliations. A candidate may use one nickname. Titles and professional designations will not be shown on the ballot. A record shall be kept of any ballots that may be mutilated, canceled, or used as samples.

(b) A space will be provided on each ballot in which the clerk prior to issuing the ballot shall note the value of the ballot which shall be exactly the same value as the voter's headright interest as shown on the last quarterly annuity roll, except any fraction of a headright shall be valued as to the first two decimals only unless such interest is less than one one-hundredth then it shall have its full value. As verification the clerk shall initial the ballot so numbered in the margin. In addition each ballot shall be stamped "Official Ballot" (facsimile signature Supervisor Osage Election Board). Should any voter spoil or mutilate his ballot in his effort to vote he may surrender the ballot to the supervisor who shall give the voter in lieu thereof another ballot which shall show its appropriate value. The spoiled or mutilated ballot or any portion of a spoiled or mutilated ballot shall be retained with other records pertaining to the election.

[32 FR 10253, July 12, 1967]

§ 73.41 Absentee voting.

(a) An eligible voter who will be unable to appear at the poll in Pawhuska on election day shall be entitled to vote by absentee ballot. Absentee ballots shall be identical to the ballots described in § 73.40 with the exception that each such ballot shall be stamped "Absentee Ballot," and reflect the date of issuance. All applications for absentee ballots shall be made in writing by the voter. Each ballot shall indicate the value of the vote to which the voter is entitled. The supervisor shall maintain a file of all applications, together with a record of the names and addresses of all persons to whom absentee ballots are mailed or delivered, including the date of mailing or delivery. All absentee ballots must be postmarked and be in the Pawhuska Post Office prior to 8 a.m. on election day.

(b) It shall be the duty of the supervisor, upon receipt of an application, to mail or deliver to the applicant an envelope containing a ballot (after removing the detachable portion), and an inner and outer envelope as described herein. This shall be done not more than 30 days before the election, except that the envelopes and ballots may be mailed to absentee voters residing outside the continental limits of the United States at any time after mailing of the election notice.

(c) If the absentee ballot and accompanying envelopes are to be mailed to the prospective voter, the written request must be submitted to the supervisor on or before 5 p.m. of the Wednesday preceding the election. The absentee ballot and accompanying envelopes may be delivered personally to the prospective voter any time prior to the opening of the poll.

(d) The absentee voter shall mark the ballot and seal it only in the inner envelope. The following shall be printed on the inner envelope:

ABSENTEE BALLOT

ELECTION OF OFFICERS OF THE OSAGE TRIBE

JUNE —, 19—

(e) The absentee voter shall enclose the inner envelope in the outer envelope and after sealing same shall execute the certificate imprinted thereon which certificate shall be in the following form:

I will be unable to appear at the poll in Pawhuska, Oklahoma, on the —— day of

June 19— and have enclosed my ballot for the election of officers of the Osage Tribe.[1] (Voter's signature)————————.

The outer envelope shall be preaddressed as follows: Supervisor, Osage Election Board, Post Office Box ——, Pawhuska, Okla. 74056.

(45 Stat. 1481)

[23 FR 1948, Mar. 25, 1958; 23 FR 2026, Mar. 27, 1958, as amended at 43 FR 8799, Mar. 3, 1978]

§ 73.42 Absentee ballots.

The absentee ballots shall remain in the locked box in the post office, Pawhuska, Okla., until 8 a.m. on the day of election at which time the supervisor or assistant supervisor of the election board, accompanied by the Superintendent of the Osage Agency or his designated representatives, shall receive the locked box from the post office and shall personally transport the locked box to the polling site where it shall be delivered immediately to the supervisor or assistant supervisor of the election board. The supervisor or the assistant supervisor in the presence of at least two judges shall unlock the locked box containing the absentee ballots and shall then determine whether the person whose name is signed to the statement is a qualified voter of the Osage Tribe and check said voter off the poll list before opening the outer envelope. After it has been determined which of the absentee ballots have been cast by duly qualified electors, the supervisor in the presence of the election board shall cause the valid ballots in the sealed inner envelopes to be placed in the ballot box.

[32 FR 10254, July 12, 1967]

§ 73.43 Canvass of election returns.

(a) Immediately after the polls are closed at 8 p.m., the counting of the ballots shall commence. The supervisor and not less than two judges shall remain continuously in the room until the ballots are finally counted. One or more judges shall act as official counters and two or more clerks shall record the value of each vote and shall comprise a vote tallying team. The vote shall be recorded on two tally sheets by each team of judges and clerks under the name of each candidate for whom the voter designated his choice. The count shall continue until all votes have been recorded. The duties of the remaining officials of the election board will be to assist in conducting the election. After the vote of each ballot is recorded, the ballot shall be pierced by needle and string and after the ballots have been so counted, the ends of the string shall be tied together. After all other ballots have been counted, the sealed inner envelopes containing the absentee ballots shall be opened and all ballots found to be valid shall be counted and treated in the same manner as other valid ballots. All ballots and mutilated ballots; registration lists of voters, both absentee and those appearing at the poll; all tally sheets; and all other election materials shall be placed in the ballot box which shall be locked. The supervisor shall then deliver the locked ballot box and keys to same to the Superintendent, Osage Agency, and the box shall be retained in a safe place until opened by order of the supervisor or election board in the event a contest is filed. If no contest is filed, the ballots shall be destroyed 180 days after the election. No information concerning voting shall be posted or made public information until after 8 p.m.

(b) Should any ballot be marked for more than one principal chief or assistant chief or for more than eight councilmen, only that section of the ballot wherein the error was made shall be declared void and the remaining section or sections shall be counted in the same manner as other ballots. Absentee ballots shall be declared void when items other than the ballot are enclosed in the inner envelope, the voter fails to sign the statement appearing on the outer envelope, and for failure to seal the inner envelope or enclose the inner envelope in the outer envelope. Votes cast for individuals whose names are not printed on the official ballot shall not be counted.

[32 FR 10254, July 12, 1967, as amended at 43 FR 8799, Mar. 3, 1978]

[1] Criminal penalties are provided by statute for knowingly filing false information in such statements (18 U.S.C. 1001).

§ 73.44 Statement of supervisor.

Following the election a statement is to be prepared by the supervisor pertaining to the conduct of the election and certifying to the correct tabulation of the votes for each candidate. The statement shall also set forth the names of the elected candidates and the office to which each was elected. The statement shall be duly acknowledged before an officer qualified to administer oaths and delivered to the Superintendent of the Osage Agency.

[32 FR 10254, July 12, 1967]

§ 73.45 Electioneering.

No person shall be allowed to electioneer within the building where and when the election is in progress and it will be the duty of the supervisor to request the detail of a police officer to assist him in maintaining order about the building during the progress of the election.

§ 73.46 Notification of election of tribal officers.

The Superintendent of the Osage Indian Agency shall in due time give written notice to candidates of their election to the various tribal offices and as soon thereafter as practicable such tribal officers shall appear and subscribe to oath of office before an officer qualified to administer oaths and such oaths shall be delivered to the Superintendent and by him transmitted to the Commissioner of Indian Affairs.

§ 73.47 Contesting elections.

Any unsuccessful candidate may before noon on Monday next following the tribal election file with the supervisor a challenge to the correctness of the vote cast for the office for which he was a candidate, which challenge must be accompanied by a deposit of $500. The election board or the supervisor shall order a recount and proceed with same as provided in this part. If the recount results in the contestant being elected, the deposit shall be refunded; otherwise, the deposit shall be used to defray all expenses of said recount and any balance not so used shall be returned to the contestant.

[32 FR 10254, July 12, 1967]

§ 73.48 Notice of contest.

It shall be the duty of the supervisor, to serve upon the contestee, or contestees, directly affected by such challenge or contest, a true copy of said written application, the original of which is required to be filed with the supervisor. Said service shall be made in person, where possible, within twenty-four hours after the filing of said original challenge or contest, and where personal service is impossible within such time, on account of the absence of contestee, or contestees, from Osage County, or for any other reason, it is hereby made the duty of the supervisor to serve a true copy upon the Superintendent of the Osage Indian Agency: *Provided*, That for the purpose of such constructive service, the Superintendent is hereby made and constituted the service agent of each and every candidate in all tribal elections, and by filing petition as a candidate, such candidate shall thereby be presumed conclusively to have accepted the terms and provisions hereof and specifically the constructive service as aforesaid.

§ 73.49 Expenses of elections.

All expenses of elections including compensation to the members of the election board and any clerical assistants designated by the Superintendent under § 73.32, stationery supplies, meals, printing and postage shall be borne by the Osage Tribe as set forth in an appropriate Osage Tribal Council resolution establishing current pay scale.

[27 FR 2459, Mar. 15, 1962]

PART 74—GOVERNMENT OF INDIAN VILLAGES, OSAGE RESERVATION, OKLAHOMA

Sec.

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AUTHORITY: Subdivision 9 of sec. 2, sec. 12, Act of June 28, 1906 (34 Stat. 539), sec. 3, Act of June 24, 1938 (52 Stat. 1034). Interpret or apply Act of April 18, 1912 [37 Stat. 86].

SOURCE: 28 FR 10203, Sept. 18, 1963, unless otherwise noted.

§ 74.1 Purpose.

The purpose of the regulations in this part is to establish policies and procedures for the government of Indian villages, Osage Reservation, Oklahoma.

§ 74.2 Definitions.

As used in this part:

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Superintendent" means the Superintendent or other officer in charge of Osage Agency.

(c) "Council" means the Osage Tribal Council, that elected governing body of the Osage Tribe of Indians.

(d) "Tribal Member" means any person of Osage Indian blood of whatever degree, allotted or unallotted.

(e) "Minor" means any person under 21 years of age.

(f) "Resident" means an adult tribal member who has resided in the village for thirty (30) days, in the 12-month period preceding the election.

§ 74.3 Description of village reserves.

The act of June 28, 1906 (34 Stat. 539), as amended by the act of June 24, 1938 (52 Stat. 1034) set aside certain tribal lands exclusively as dwelling sites for the use and benefit of the Osage Indians until January 1, 1984, unless otherwise provided by Act of Congress. These lands are described as follows:

(a) *Grayhorse Indian Village.* The southeast quarter (SE ¼) of the southeast quarter (SE ¼), and the west half (W ½) of the southwest quarter (SW ¼) of the southeast quarter (SE ¼), and the south half (S ½) of the northeast quarter (NE ¼) of the southeast quarter (SE ¼) of the southwest quarter (SW ¼), and the south half (S ½) of the north half (N ½) of the northeast quarter (NE ¼) of the southeast quarter (SE ¼) of the southwest quarter (SW ¼), and the southeast quarter (SE ¼) of the southeast quarter (SE ¼) of the southwest quarter (SW ¼) of sec. fifteen (15); and the north half (N ½) of the northeast quarter (NE ¼), and the northeast quarter (NE ¼) of the northwest quarter (NW ¼) of sec. twenty-two (22), all in township twenty-four (24) north, range six (6) east of the Indian meridian, and containing 197.5 acres, more or less.

(b) *Hominy Indian Village.* Lots Six (6) and Seven (7), and the East Half (E ½) of the Southwest Quarter (SW ¼) of Section Six (6) in Township Twenty-two (22) North, Range Nine (9) East of the Indian Meridian, and containing 160 acres, more or less.

(c) *Pawhuska Indian Village.* Lots One (1) and Two (2), and the South Half (S ½) of the Northeast Quarter (NE ¼) of Section Three (3) in Township Twenty-five (25) North, Range Nine (9) East of the Indian Meridian, and containing 160 acres, more or less.

[28 FR 10203, Sept. 18, 1963, as amended at 33 FR 8270, June 4, 1968]

§ 74.4 Plats of village reserves.

Plats of the Grayhorse Indian Village, the Pawhuska Indian Village, and the Hominy Indian Village, certified by Ralph M. Tolson, Registered Engineer, on July 5, 1966, are the official plats of dedication of said villages and shall be filed of record with the county clerk of Osage County, State of Oklahoma.

[33 FR 8270, June 4, 1968]

§ 74.5 Tracts reserved from selection by individuals.

The following described tracts, as shown on the plats of the three villages, are reserved from selection by individuals and are set aside for sepul-

tural use or for public use by tribal members:

(a) Grayhorse Indian Village:

(1) Public Squares,

(2) Parks, and

(3) Cemetery.

(b) Hominy Indian Village:

(1) Public squares.

(2) Cemetery, and

(3) Lot 1 in block 1 set aside for religious and educational purposes to the Society of Friends, its Associate Executive Committee of Friends on Indian Affairs and its or their representative at Hominy, Okla., by Resolution of the Osage Tribal Council dated June 6, 1956, and approved by the Assistant Secretary of the Interior, September 7, 1956.

(c) Pawhuska Indian Village:

(1) Wakon Iron Square.

(d) Those individuals who have summer homes or dance arbors located on the Public Square of the Hominy Indian Village shall be permitted to retain said summer homes or dance arbors during their lifetimes if they are maintained in a condition satisfactory to the Hominy Indian Village Committee. Following the owner's death, the improvements shall be removed within ninety [90] days or become the property of the Hominy Indian Village.

[33 FR 8270, June 4, 1968]

§ 74.6 Custody of public buildings and tracts reserved from selection by individuals; village committees.

Each of the three (3) villages described herein shall organize a village committee to provide for the health, safety and welfare of its inhabitants, for the maintenance of tribal property, and to serve as custodian and manager of tribal property and improvements located within said village except that tract described in § 74.5(b)(3). Each village committee shall be composed of five (5) members, domiciled in the village, one of whom shall be designated by the committee as chairman. The committees shall be elected biennially by the residents of the villages, except in the Grayhorse Indian Village where the committee shall be appointed by the Council from among those tribal members residing in or historically associated with the village. The procedure for initial committee elections shall be established by the Council. Each village committee shall prepare a constitution and by-laws to be approved by the Council and the Superintendent before said committee will have any authority to govern, and any changes or amendments thereto must likewise be approved by the Council and the Superintendent. All actions of the committee are subject to appeal to the Council whose decision shall be final: *Provided*, That such committee shall have no control or authority to grant permission for the use of tribal property described in § 74.5 for the holding of dances. Such authority shall remain in the Council and any group or individual using the property for dance purposes without the written permission of the Council shall be in violation of these regulations: *Provided, further*, That the village committee shall not permit the use of any of the tracts described in § 74.5 in any manner that would conflict with Council authorization for dance purposes.

§ 74.7 Permits to occupy land for dwelling purposes.

The issuance of permits for the use of land for dwelling purposes within any village reserve described in § 74.3 except tracts reserved for specific purposes by § 74.5 will be under the jurisdiction of the Superintendent. Permits may be issued only to tribal members upon application to the Superintendent: *Provided*, That only one permit shall be issued to any one individual and that erection of a dwelling house shall be started on such land within six (6) months from date of approval of the permit or such permit shall be automatically terminated except that upon written application the Superintendent may extend such permit for an addition six (6) months: *Provided, further*, That only one dwelling shall be constructed under any one permit. Permits shall be issued for the use of one to three contiguous lots, depending upon the quality and permanency of the improvements to be placed thereon. Permits issued under this Section shall be made in duplicate in a manner to be prescribed by the Super-

intendent. The original copy shall be filed in the Branch of Realty, Osage Agency, and the duplicate copy shall be mailed to the permittee.

[33 FR 8270, June 4, 1968]

§ 74.8 Sale or mortgage of improvements.

No improvements located within the village reserves described in § 74.3 shall be sold, mortgaged, transferred or assigned without the approval of the Superintendent.

(a) Improvements may be mortgaged for home improvements or the erection of new improvements. Such mortgages shall be made with acceptable lending agencies and shall be approved by the Superintendent. The lending agency shall have the right (1) to foreclose the mortgage and to sell the improvements within six (6) months of the date of foreclosure judgment to any eligible tribal member with the understanding that the use of the land on which the improvements are situated shall be transferable to the new owner; or (2) to foreclose the mortgage and to sell the improvements to a non-tribal member, who shall remove the improvements from the village reserve within six (6) months of the date of sale. In the event of removal of the mortgaged property, it shall be the responsibility of the lending agency to level the land on which such improvements were located and to remove all debris, sidewalks, etc., leaving the premises in an orderly condition. Failure to make such disposition within the time stated in this paragraph shall result in forfeiture of the improvements to the village committee.

(b) Improvements may be sold by the owner thereof with the approval of the Superintendent. Sale of such improvements shall be accomplished by bill of sale executed by the owner in triplicate who shall file all copies with the Superintendent. If the purchaser of such improvements is a member of the Osage Tribe, the bill of sale shall be accompanied by a relinquishment of the permit in favor of the vendee for the occupancy of the land on which such improvements are located. If the purchaser is not a member of the Osage Tribe, such purchaser shall be required to endorse an agreement on the reverse of all copies of the bill of sale that he will (1) remove the improvements from the village reserve within six (6) months of date of approval of the bill of sale; (2) transfer the title thereof as provided in this section to a tribal member who is eligible; or (3) failing to make such disposition within the time stated forfeit title to the village committee.

(c) Upon approval of the bill of sale by the Superintendent, the original or certified copy shall be filed in the Branch of Realty, Osage Agency, the duplicate copy mailed to the purchaser, and the triplicate copy mailed to the seller.

§ 74.9 Inheritance of improvements.

(a) Upon the death of the owner of improvements in a village reserve, such improvements shall, in probate matters, be subject to the jurisdiction of the county courts, State of Oklahoma, and shall be subject to inheritance or bequest in accordance with applicable State and Federal laws. The land within a village reserve is held in trust for the benefit of tribal members and is not subject to inheritance or purchase.

(b) When such improvements or interests therein are inherited by or bequeathed to a non-tribal member, he or she shall dispose of such improvements in the manner provided for disposition of improvements by purchaser under § 74.8: *Provided*, That when such non-tribal member is a legally adopted minor child such child may continue to occupy the land during its minority: *Provided, further*, That when such non-tribal member is the surviving spouse such individual, so long as he or she remains single may continue to occupy the land during his or her lifetime or may sell the improvements as provided herein and may receive a proceeds therefrom. In the event such surviving spouse remarries, the right to continuous occupancy of the land pursuant to this § 74.9 shall terminate and such surviving spouse shall make disposition of such improvements as provided for purchasers in § 74.8. If upon the death of the surviving spouse title to the improvements vests in a non-tribal member, they shall be sold as provided in § 74.8

and the proceeds distributed to the persons entitled thereto.

(c) Improvements inherited by tribal members may be occupied or rented in accordance with § 74.10: *Provided*, No tribal member shall be issued more than two permits or own more than two sets of improvements, one of which must be inherited property and one occupied by the tribal member: *Provided, further*, No tribal member shall be permitted to retain more than one set of improvements for rental. If this provision is violated, the tribal member will have three years, from the date of written notice from the Superintendent that such provision has been violated, within which to dispose of the surplus property in accordance with § 74.8.

§ 74.10 Renting of improvements.

The Superintendent may issue a certificate of permission to rent for a period of one (1) year improvements located on land held under valid permit, subject to renewal in the discretion of the Superintendent, upon written application by the owner of such improvements and the prospective tenant: *Provided*, That such prospective tenant is a tribal member and the property to be rented is that heretofore occupied or inherited by the owner. Certificates of permission issued under this section may be withdrawn upon 30-day notice to the tenant by the Superintendent and such tenant expelled from the village reserve. The application and certificate of permission on a form to be prescribed by the Superintendent shall be made in triplicate and all copies forwarded to the Superintendent for action. Upon approval by the Superintendent, the original copy of the application and certificate shall be filed in the Branch of Realty, Osage Agency, the duplicate copy of each forwarded to the owner, and the triplicate copy of each forwarded to the tenant.

§ 74.11 Domestic animals in village reserves.

(a) No livestock shall be permitted to trespass in any village reserve except that unassigned lots or unplatted areas enclosed by adequate fences may be leased by the village committee with the approval of the Superintendent and the proceeds therefrom credited to the account of the village committee. Trespassing livestock may be impounded by the village committee. The village committee shall give notice of impoundment to the owner of the animal, if known, by certified mail or by posting in the village square. The notice shall advise the owner that a $10 charge shall be assessed per day for each animal impounded and a reasonable charge for forage consumed and that the animal or animals shall be sold at the expiration of twenty (20) days from the date of mailing or posting the notice. In the event an animal is sold, the balance after deducting $10 per day for impoundment and a reasonable forage charge, shall be deposited at the Osage Agency and the owner may claim said funds if satisfactory proof of ownership is presented to the Superintendent of the Osage Agency within six (6) months of the date of sale. After six (6) months, any funds remaining on deposit will become the property of the village in which the animal was trespassing.

(b) No horses, mules, bovine, hogs, sheep, or goats shall be penned on assigned lots.

[33 FR 8270, June 4, 1968]

§ 74.12 Business enterprises and public buildings.

No permanent business enterprises shall be carried on within the boundaries of a village reserve and no public buildings shall be erected on lands within the boundaries of a village reserve except on tracts described in § 74.5 maintained for the use and benefit of tribal members. The construction or acquisition of dwellings for rental purposes is prohibited. The village committee may grant permission and charge fees for temporary concessions within the village reserve during Indian celebrations, dances, community gatherings, etc., such temporary permits to last only for the term of activities for which granted.

§ 74.13 Health, sanitation, and sewerage disposal.

Health, sanitation, and sewerage disposal problems within the village re-

serves shall be subject to and controlled by applicable County and State laws.

§ 74.14 Confirmation of permits.

The Superintendent shall prepare a certified list of all current permittees with a description of lots held, which descriptions shall conform to the plats certified July 5, 1966. Said list shall be served by certified mail on the individual permittees and the village committee chairman and shall be posted at the Osage Agency and each of the three village squares. Unless a protest is filed with the Superintendent within ninety (90) days of the mailing and posting, said certified list of assigned lots and the individual permittees shall be final and conclusive. Protests may be filed by tribal members claiming an interest in an assigned lot and such protest shall be determined by the Superintendent after notice and hearing.

[33 FR 8271, June 4, 1968]

§ 74.15 Suspension or amendment of regulations.

The regulations in this part may be suspended or amended at any time by the Secretary of the Interior: *Provided*, That such amendments or suspension shall not serve to change the terms or conditions of any mortgage approved in accordance with § 74.8(a).

SUBCHAPTER H—ECONOMIC ENTERPRISES

PART 80—INDIAN BUSINESS DEVELOPMENT PROGRAM

Sec.

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80.4 Eligible economic enterprises.
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80.13–80.14 [Reserved]
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80.17 Grant limitations and requirements.
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80.22 Reports.

AUTHORITY: Sec. 404, 88 Stat. 77.

SOURCE: 39 FR 44748, Dec. 27, 1974, unless otherwise noted.

§ 80.1 Definitions.

As used in this Part 80:

(a) "Secretary" means the Secretary of the Interior.

(b) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(c) "Area Director" means the Bureau official in charge of an Area Office or his authorized representative.

(d) "Superintendent" means the Bureau official in charge of a Bureau Agency office or other local office reporting to an Area Director.

(e) "Indian" means any person who is a member of any Indian tribe, band, group, pueblo or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any Native as defined in paragraph (f) of this section.

(f) "Native" means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group.

(g) "Tribe" means any Indian tribe, band, group, pueblo or community and any Native village or Native group (including corporations organized by Kenai, Juneau, Sitka and Kodiak) as defined in paragraphs (h) and (i) of this section, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

(h) "Native village" means any tribe, band, clan, group, village, community, or association in Alaska listed in sections 11 and 16 of the Alaska Native Claims Settlement Act (85 Stat. 688), or which meets the requirements of the Act, and which the Secretary determines was, on the 1970 census enumeration date (as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance), composed of twenty-five or more Natives.

(i) "Native group" means any tribe, band, clan, village, community, or village association of Natives in Alaska composed of less than twenty-five Natives, who comprise a majority of the residents of the locality.

(j) "Reservation" means Indian reservations, unterminated California rancherias, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688).

(k) "Economic enterprise" means any Indian-owned, commercial, industrial, agricultural, or business activity established or organized for the pur-

pose of profit, provided that eligible Indian ownership constitutes not less than fifty-one percent of the enterprise.

(l) "Organization" means the governing body of any Indian tribe, as defined in paragraph (g) of this section, or entity established or recognized by such governing body for the purpose of the Indian Financing Act of 1974 (88 Stat. 77).

(m) "Other organizations" means any non-Indian individual, firm, corporation, partnership, or association.

(n) "Personally operated enterprise" means a business activity personally owned and operated, and managed by an individual grantee on a full or part-time basis, with or without hired labor.

(o) "Profits" means the net income earned after deducting operating expenses from operating revenues.

(p) "Grantee(s)" means the recipient(s) of a nonreimbursable grant under this part.

(q) "Cooperative Association" means an association of individuals organized pursuant to state, federal or tribal law, for the purpose of owning and operating an economic enterprise for profit with profits distributed or allocated to patrons who are members of the organization.

(r) "Corporation" means an entity organized pursuant to state, federal, or tribal law, with or without stock, for the purpose of owning and operating an economic enterprise.

(s) "Partnership" means two or more persons engaged in the same business, sharing its profits and risks, organized pursuant to State, Federal, or Tribal law.

§ 80.2 Purpose.

The purpose of this Part 80 is to prescribe the regulations and procedures under which non-reimbursable grants may be made to eligible applicants to stimulate and increase Indian entrepreneurship and employment through establishment, acquisition or expansion of profit-making Indian-owned economic enterprises which will contribute to the economy of a reservation.

§ 80.3 Eligible applicants.

Applications for grants may be accepted only from individual Indians, Indian tribes, Indian partnerships, corporations or cooperative associations authorized to do business under State, Federal, or Tribal law. These applicants must have a form of organization acceptable to the Commissioner and unable to meet their total financing needs from their own resources and by loans from other sources such as banks, Farmers Home Administration, Small Business Administration, Production Credit Associations, and Federal Land Banks. Associations, corporations or partnerships shall be at least fifty-one percent owned by eligible Indians or an eligible Indian tribe. This Indian ownership must actively participate in the management and operation of the economic enterprise by representation on the board of directors of a corporation or cooperative association proportionate to the Indian ownership which will enable the Indian owner(s) to control management decisions. The legal organization documents will provide for the number of Indians which are to be on the board of directors, how they along with other directors will be elected or appointed and qualifications required as a condition for becoming a member of the board of directors. The legal organization documents shall provide safeguards which will prevent Indian ownership and control from decreasing below fifty-one percent. Evidence of Indian ownership in a cooperative association or corporation will be evidenced by stock ownership, if stock is or has been issued, or by other evidence satisfactory to the Commissioner. Partnerships will be evidenced by written partnership agreements which show the percentage of Indian ownership, role and authority in making management decisions in controlling the operation of the economic enterprise.

§ 80.4 Eligible economic enterprises.

An economic enterprise as defined in § 80.1(k) is eligible to receive equity capital through non-reimbursable grants if it is or will be self-sustaining and profit-oriented and will create employment for Indians. In the case of

Indian-owned cooperative associations, they must distribute or allocate profits for later distribution, to members who are patrons, unless prohibited from doing so by law.

§§ 80.5—80.6 [Reserved]

§ 80.7 Location of enterprise.

To be eligible for a grant an economic enterprise must be located on an Indian reservation or located where it makes or will make an economic contribution to a nearby reservation by providing employment to tribal members residing thereon or by expending a portion of its income for materials or services on the reservation. Economic enterprises which are or will be operated on a reservation must comply with the requirements of applicable rules, resolutions or ordinances adopted by the governing body of the tribe, if applicable.

§ 80.8 Priority criteria.

The following priority will be used in selecting economic enterprises for grant funding:

(a) *First priority.* First priority will be given to economic enterprises located on a reservation that will:

(1) Utilize Indian resources, both natural and human.

(2) Create the highest ratio of Indian jobs to the total amount of dollars to be invested, including market value of materials and equipment contributed to the project.

(3) Create the highest ratio of income to a tribe or its members in relation to the total amount of dollars to be invested, including market value of materials or equipment contributed to the project.

(4) Generate the most non-Bureau financing.

(b) *Second priority.* Second priority will be given to projects located in the immediate vicinity of a reservation that will:

(1) Utilize Indian resources, both natural and human.

(2) Create the highest ratio of Indian jobs to the total amount of dollars to be invested, including market value of materials and equipment contributed to the project.

(3) Generate the most non-Bureau financing.

§ 80.9 Environmental and flood disaster protection.

Grant funds will not be advanced until there is assurance of compliance with any applicable provisions of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), the National Environmental Policy Act (Pub. L. 91-190), 42 U.S.C. 4321 and Executive Order 11514.

§ 80.10 Preservation of historical and archeological data.

The Commissioner before approving a grant where the grant funds and/or the loan funds will be used to finance activities involving excavations, road construction, and land development or involving the disturbance of land on known or reported historical or archeological sites, will take appropriate action to assure compliance with applicable provisions of the Act of June 27, 1960 (74 Stat. 220 (16 U.S.C. 469)), as amended by the Act of May 24, 1974 (Pub. L. 93-291, 88 Stat. 174), relating to the preservation of historical and archeological data.

§ 80.11 Management and technical assistance.

(a) Concurrent with the approval of a grant to finance an Indian economic enterprise, the Commissioner will insure that competent management and technical assistance is available to the grantee consistent with the grantee's knowledge and experience and the nature and complexity of the economic enterprise being financed. Assistance may be provided by available Bureau of Indian Affairs staff, other government agencies including states, tribes, or other sources which the Commissioner considers competent to provide needed assistance. It is intended that contracting for management and technical assistance be used only when adequate assistance is not available without cost. Contracts entered into in order to provide grantees with competent management and technical assistance shall be in accordance with applicable sections of the Federal Procurement Regulations and the Buy Indian Act of April 30, 1908, chapter

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153 (35 Stat. 71) as amended June 25, 1910, chapter 431, section 25, (36 Stat. 861).

(b) The lender providing the loan funds under § 80.17(b) to finance an economic enterprise will include with the grantee's application the need for equity capital, the lender's evaluation of the applicant's need for management and technical assistance, specific areas of need and whether the lender will provide such assistance to the applicant.

§ 80.12 Content of application.

Applications shall be on a form prescribed by the Commissioner which shall at the minimum include:

(a) Total capital requirement, including operating capital required until such time as the cash generated from operations will be sufficient to make the enterprise self-sustaining.

(b) Amount of total financing required as well as what is obtainable from other sources, including the applicant's personal resources, and a statement of terms and conditions under which any borrowed portion is obtainable.

(c) Capital deficiency, which will be the basis for the amount of grant requested.

(d) Pro forma balance sheets and operating statements showing estimated expenses, income and net profit from operations for three years following receipt of the requested grant.

(e) Annual operating statements and balance sheets, audited if available, for the prior two years or applicable years for enterprises already in operation.

(f) Current financial statements, consisting of a balance sheet and operating statement.

(g) A plan of operation which shall be acceptable to the lender making the loan and the Commissioner.

§§ 80.13—80.14 [Reserved]

§ 80.15 Application procedures.

Applications are to be submitted to the Superintendent having administrative jurisdiction over the reservation on which an enterprise will be or is located. If the enterprise site is near two or more reservations, application is to be made to the Superintendent having administrative jurisdiction over the reservation nearest to the location of the enterprise which the enterprise will benefit economically.

§ 80.16 Grant approval authority.

Applications for grants require approval by the Commissioner.

§ 80.17 Grant limitations and requirements.

(a) Grants will be made to assist in establishing new economic enterprises, or in purchasing or expanding established ones. However, a grant may be made only when in the opinion of the Commissioner the applicant is unable to obtain adequate financing from other sources such as banks, Farmers Home Administration, Production Credit Associations, Federal Land Banks and, is also unable to obtain a guaranteed or insured loan under Title II of the Indian Financing Act of 1974 (88 Stat. 77). Prior to making any grant, the Commissioner shall assure that, where practical, the applicant has reasonably made available for loan security and/or for input into the economic enterprise collateral or funds from his own resources. If the information in an application indicates that it may be possible for the applicant to obtain financing without a grant, the Commissioner will require the applicant to furnish letters from two customary lenders in the area, if available, who are making loans for similar purposes, showing whether or not they will make a loan to the applicant for the total financing needed without a grant.

(b) A grant may be made only to an applicant who is able to obtain at least 60 percent of the necessary financing from other sources.

(c) No grant in excess of $50,000 may be made to any applicant.

(d) Revolving loan funds as prescribed in Title I of the Indian Financing Act of 1974 and guaranteed or insured loans as prescribed in Title II of said Act may not be used as the sources of the loan portion of the total financing requirement if financing from other governmental or institutional lenders is available on reasonable terms and conditions. If a loan is not available from other sources, guar-

anteed or insured loans under the provisions of Title II of said Act may then be considered. If a guaranteed or insured loan is not available loans under the provisions of Title I of said Act may then be considered. Applicants for a loan from either source must meet the eligibility requirements for such loans.

(e) A grant will not be approved unless there is assurance the applicant can and will be provided with needed competent technical and management assistance commensurate with the nature of the enterprise to be funded and the knowledge and management skills of the applicant.

(f) Grant funds may not be used for refinancing or debt consolidation unless approval is justified and required due to the applicant's financial position and is clearly to the advantage of the grant applicant.

(g) Ordinarily, not more than one grant will be made for a project. Nevertheless, in certain circumstances a second grant may be made to the same applicant for a new project or expansion of the original project. An addition grant will not be approved for an economic enterprise previously funded under the provisions of Title IV of the Indian Financing Act of 1974 except for expanding a successful enterprise, provided the total of grants made shall not exceed $50,000. Information to be submitted with the application will include at a minimum the following:

(1) Use made of the prior grant. Where practical, evidence of such use shall be furnished.

(2) Evidence of competent management.

(3) Maintenance of adequate accounting records.

(4) That the operation is profitable as evidenced by operating statements and balance sheets prepared from the accounting records.

(5) That expansion will increase the net profit and/or increase Indian employment.

(h) An application for a second grant will not be approved if the applicant: (1) has not complied with the reporting requirements in connection with the first grant, or (2) has not followed the plan of operation, if any, developed for the management and operation of the economic enterprise, or (3) did not follow and use the management and technical assistance furnished, or (4) is in violation of one or more provisions of the loan agreement entered into between the applicant and the lender who furnished the loan portion of the financing in connection with the first grant.

(i) An applicant for an expansion grant must meet the same eligibility requirements as an original applicant.

§ 80.18 Written notice.

The applicant for a grant which is disapproved will be notified by letter, stating the reasons for disapproval and the right of appeal pursuant to 25 CFR 2.21, et seq. A copy of the letter will be sent to the prospective lender.

§ 80.19 [Reserved]

§ 80.20 Disbursement of grant funds.

Unless otherwise provided by an agreement between a lender and the grantee, the Commissioner may in his discretion advance grant funds directly to a grantee. He may require the funds to be deposited in a special account at the appropriate Agency headquarters office or deposited in a joint account in a bank and disbursed as needed by the grantee. The terms of a lender's loan agreement may require the lender's approval before disbursement of the funds. Grant funds will not be disbursed to a grantee until the Commissioner has been informed by the lender that a loan has been approved for the grantee in the amount of the loan financing needed.

§ 80.21 Return of unused funds.

Grantees will be required to return unused grant funds to the Commissioner if the economic enterprise for which the grant was approved is not initiated, i.e., lease obtained, if needed, construction started, equipment purchased or other, within the time stated in the grant agreement. The Commissioner may, if warranted by circumstances beyond the control of the grantee, extend the time to allow for initiation of the enterprise, provided there is assurance the enterprise will be initiated forthwith within the

extended time period. The Commissioner will notify the lender in writing of a proposed action to require the return of grant funds or of a proposal to extend the time.

§ 80.22 Reports.

(a) Grantees are required to furnish the Commissioner comparative balance sheets and profit and loss statements semi-annually for the first two years of operation following receipt of the grant, and annually thereafter for the succeeding three years. These may be copied of financial statements required by and furnished to the lender which provided the loan portion of the total financing required. If the lender does not require financial statements, the grantee must prepare and furnish copies of comparative balance sheets and profit and loss statements to the Commissioner.

(b) The Commissioner will establish accounting and reporting systems which will appropriately show the status of the Indian Business Development Program at all times.

PART 88—INDIAN FISHING IN ALASKA

Sec.

88.1 Purpose.
88.2 Annette Islands Reserve; definition; exclusive fishery; licenses.
88.3 Commercial fishing, Annette Islands Reserve.
88.4 Subsistence and sport fishing, Annette Islands Reserve.
88.5 Commercial fishing, Karluk Indian Reservation.
88.6 Enforcement; violation of regulations; corrective action; penalties; closure of restrictions, Annette Islands Reserve.

AUTHORITY: 25 U.S.C. 2, 9; 43 U.S.C. 1457; sec. 15, 26 Stat. 1101, 48 U.S.C. 358; Presidential Proclamation, Apr. 28, 1916, 39 Stat. 1777; sec. 2, 49 Stat. 1250, 48 U.S.C. 358a; sec. 4, 72 Stat. 339, as amended 73 Stat. 141.

SOURCE: 28 FR 7183, July 12, 1963, unless otherwise noted.

§ 88.1 Purpose.

The purpose of the regulations in this part is to regulate all fishing within the Annette Islands Reserve and to regulate Indian and other native commercial fishing in the Karluk Indian Reservation, but they shall not be construed to limit any rights of Indians or other natives of Alaska not specifically covered hereby.

§ 88.2 Annette Islands Reserve; definition; exclusive fishery; licenses.

(a) *Definition.* The Annette Islands Reserve is defined as the Annette Islands in Alaska, as set apart as a reservation by section 15 of the Act of March 3, 1891 (26 Stat. 1101, 48 U.S.C. sec. 358), and including the area identified in the Presidential Proclamation of April 28, 1916 (39 Stat. 1777), as the waters within three thousand feet from the shore lines at mean low tide of Annette Island, Ham Island, Walker Island, Lewis Island, Spire Island, Hemlock Island, and adjacent rocks and islets, located within the broken line upon the diagram attached to and made a part of said Proclamation; and also the bays of said islands, rocks, and islets.

(b) *Exclusive fishery.* The Annette Islands Reserve is declared to be exclusively reserved for fishing by the members of the Metlakatla Indian Community and such other Alaskan Natives as have joined or may join them in residence on the aforementioned islands, and any other person fishing therein without authority or permission of the Metlakatla Indian Community shall be subject to prosecution under the provisions of section 2 of the Act of July 2, 1960 (74 Stat. 469, 18 U.S.C. sec. 1165).

(c) *Licenses.* Members of the Metlakatla Indian Community, and such other Alaskan Natives as have joined them or may join them in residence on the aforementioned islands, shall not be required to obtain a license or permit from the State of Alaska to engage in fishing in the waters of the Annette Islands Reserve.

§ 88.3 Commercial fishing, Annette Islands Reserve.

(a) *Definition.* Commercial fishing is the taking, fishing for, or possession of fish, shellfish, or other fishery resources with the intent of disposing of such fish, shellfish, or other fishery resources or parts thereof for profit, or by sale, barter, trade, or in commercial channels.

(b) *Trap fishing sites; number and location.* During 1963, and until the Secretary of the Interior or his duly authorized representative determines otherwise, the Metlakatla Indian Community is permitted to operate not more than one trap per site for salmon fishing at any four of the following sites in the Annette Islands Reserve, Alaska:

(1) Annette Island at 55 degrees 15 minutes 09 seconds north latitude, 131 degrees 36 minutes 00 seconds west longitude.

(2) Annette Island at 55 degrees 12 minutes 52 seconds north latitude, 131 degrees 36 minutes 10 seconds west longitude.

(3) Annette Island at 55 degrees 02 minutes 47 seconds north latitude, 131 degrees 38 minutes 53 seconds west longitude.

(4) Annette Island at 55 degrees 05 minutes 41 seconds north latitude, 131 degrees 36 minutes 39 seconds west longitude.

(5) Annette Island at 55 degrees 01 minute 54 seconds north latitude, 131 degrees 38 minutes 36 seconds west longitude.

(6) Annette Island at 55 degrees 00 minutes 45 seconds north latitude, 131 degrees 38 minutes 30 seconds west longitude.

(7) Annette Island at 54 degrees 59 minutes 41 seconds north latitude, 131 degrees 36 minutes 48 seconds west longitude.

(8) Ham Island at 55 degrees 10 minutes 13 seconds north latitude, 131 degrees 19 minutes 31 seconds west longitude.

(c) *Trap fishing season.* Fishing for salmon with traps operated by the Metlakatla Indian Community is permitted only at such times as commercial salmon fishing with purse seines is permitted by order or regulation of the Alaska Board of Fish and Game for Commercial Fishing in any part of the following area: from the point at which meridian 132 17'30", thence due east along said parallel to longitude 130°49'15", then due south along said meridian to the point at which it intersects with the United States-Canadian boundary, thence due west along said boundary to the point of beginning, provided, however, that the Secretary or his duly authorized representative may upon request by the Metlakatla Indian Community, authorize fishing for salmon with traps, at such other times as he shall prescribe, which authorization shall be based upon the following criteria:

(1) Number of fish required for spawning escapement and any other requirements reasonable and necessary for conservation;

(2) Fair and equitable sharing of the salmon resource with other user groups fishing in State waters under State law and within the State fisheries management system; and

(3) The federal purpose in the establishment and maintenance of the Metlakatla Indian Reservation.

(d) *Size, construction and closure of fish traps*—(1) *Size.* When any part of a trap is in a greater depth of water than 100 feet, the trap as measured from shore at mean high tide to the outer face of the pot shall not extend beyond 900 feet.

(2) *Construction.* Poles shall be permanently secured to the webbing at each side of the mouth of the pot tunnel and shall extend from the tunnel floor to a height at least four feet above the water. A draw line shall be reeved through the lower end of both poles and the upper end of one.

(3) *Method of closing.* The tunnel walls shall be overlapped as far as possible across the pot gap and the draw line shall be pulled tight and both secured so as to completely close the tunnel. In addition, 25 feet of the webbing of the heart on each side next to the pot shall be lifted or lowered in such manner as to permit the free passage of fish.

(e) *Other forms of commercial fishing.* All commercial fishing, other than with traps, shall be in accordance with the season and gear restrictions established by rule or regulation by the Alaska Board of Fish and Game for Commercial Fishing in any part of the previously defined area; provided, however, that the Secretary or his duly authorized representative may, upon request by the Metlakatla Indian Community authorize such other commercial fishing at such times as he shall prescribe, which authorization

shall be based upon the following criteria:

(1) Number of fish required for spawning escapement and any other requirements reasonable and necessary for conservation;

(2) Fair and equitable sharing of the fishery resource with other user groups fishing in State waters under State law and within the State fisheries management system; and

(3) The Federal purpose in the establishment and maintenance of the Metlakatla Indian Reservation.

[28 FR 7183, July 12, 1963; 28 FR 12273, Nov. 20, 1963, as amended at 40 FR 24184, June 5, 1975]

§ 88.4 Subsistence and sport fishing, Annette Islands Reserve.

(a) *Definitions.* (1) Subsistence fishing is the taking or attempting to take any species of fish or shellfish for purposes other than sale or barter, except as provided for in subparagraph (2) of this paragraph.

(2) Sport fishing is the taking or attempting to take for personal use, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line or by such means as defined by regulation or statute of the State of Alaska.

(b) *Restrictions.* Subsistence fishing within the Annette Islands Reserve shall be in accordance with the season, gear and bag restrictions established by rule or regulation of the Alaska Board of Fish and Game for Commercial Fishing in Fishing District No. 1. Sport fishing within the Annette Islands Reserve shall be in accordance with the season, gear and bag restrictions established by rule or regulation for Southeastern Alaska by the Alaska Board of Fish and Game. Both subsistence and sport fishing shall also be in accordance with such ordinances as may be adopted by the Council of the Metlakatla Indian Community and approved by the Secretary of the Interior.

§ 88.5 Commercial fishing, Karluk Indian Reservation.

(a) *Definition.* The Karluk Indian Reservation includes all waters extending 3,000 feet from the shore at mean low tide on Kodiak Island beginning at the end of a point of land on the shore of Shelikof Strait about 1¼ miles east of Rocky Point and in approximate latitude 57 degrees 39 minutes 40 seconds N., longitude 154 degrees 12 minutes 20 seconds W.; thence south approximately 8 miles to latitude 57 degrees 32 minutes 30 seconds N.; thence west approximately 12½ miles to the confluence of the north shore of Sturgeon River with the east shore of Shelikof Strait; thence northeasterly following the easterly shore of Shelikof Strait to the place of beginning, containing approximately 35,200 acres.

(b) *Who may fish; licenses.* The waters of the Karluk Indian Reservation shall be open to commercial fishing by bona fide native inhabitants of the native village of Karluk and vicinity, and to other persons insofar as the fishing activities of the latter do not restrict or interfere with fishing by such natives. Such natives shall not be required to obtain a license to engage in commercial fishing in the waters of the Karluk Indian Reservation.

(c) *Salmon fishing; restrictions.* Commercial fishing for salmon by native inhabitants of the native village of Karluk and vicinity in the waters of the Karluk Indian Reservation shall be in accordance with the seasonal and gear restrictions of the rules and regulations of the Alaska Board of Fish and Game for Commercial Fishing in the fishing district embracing the Karluk Indian Reservation except that: (1) Beach seines up to 250 fathoms in length may be used northeast of Cape Karluk; and (2) prior to July 1, fishing shall be permitted to within 100 yards of the Karluk River where it breaks through the Karluk Spit into Shelikof Strait.

§ 88.6 Enforcement; violation of regulations; corrective action; penalties; closure of restrictions, Annette Islands Reserve.

(a) *Enforcement.* The regulations in this part shall be enforced by any duly authorized representative of the Secretary of the Interior. Any fish trap, vessel, gear, processing establishment or other operation or equipment subject to the regulations of this part

shall be available for inspection at all times by such representative.

(b) *Violation of regulations.* Whenever any duly authorized enforcement representative of the Secretary of the Interior has reasonable cause to believe any violation of the regulations of this part relating to fish traps has occurred, he shall direct immediate closure of the trap involved and shall affix an appropriate seal thereto to prevent further fishing. The matter shall be reported without delay to the Area Director, Bureau of Indian Affairs, who shall thereupon report and recommend to the Secretary of the Interior appropriate corrective action.

(c) *Corrective action.* Any violation of the regulations of this part relating to fish traps shall be ground for the temporary or permanent closure, as the Secretary of the Interior may determine, of any or all traps authorized by § 88.3(a), or the withdrawal and rescission of the right to fish for salmon with traps at any or all sites authorized thereby.

(d) *Penalties.* Any person who violates any of the regulations of this part shall be subject to prosecution under section 2 of the Act of July 12, 1960 (74 Stat. 469, 18 U.S.C. sec. 1165), which provides as follows:

"Whoever, without lawful authority or permission, willfully and knowingly goes upon any land that belongs to any Indian or Indian tribe, band, or group and either are held by the United States in trust or are subject to a restriction against alienation imposed by the United States, or upon any lands of the United States that are reserved for Indian use, for the purpose of hunting, trapping, or fishing thereon, or for the removal of game, peltries, or fish therefrom, shall be fined not more than $200 or imprisoned not more than ninety days, or both, and all game, fish, and peltries in his possession shall be forfeited.

(e) *Closure or restriction, Annette Islands Reserve.* The Commissioner of Indian Affairs, after consultation with officials of the Metlakatla Indian Community, is authorized and directed, upon a determination of the necessity to promote sound conversation practices, to restrict or close to commercial, subsistence or sport fishing any portion of the Annette Islands Reserve by notice given appropriate local publicity.

[28 FR 7183, July 12, 1963, as amended at 30 FR 5742, Apr. 23, 1965]

PART 89—COMMERCIAL FISHING ON RED LAKE INDIAN RESERVATION

Sec.
89.1 Definitions.
89.2 Authority to engage in commercial fishing.
89.3 Authority to operate.
89.4 Fishing.
89.5 Disposition of unmarketable fish.
89.6 Spawning season.
89.7 Suspension.
89.8 Penalty.
89.9 Quotas.
89.10 Fishing equipment limitations.
89.11 Royalty.
89.12 Authority to ease.

AUTHORITY: 25 U.S.C. 2, 5 U.S.C. 301.

SOURCE: 25 FR 7784, Aug. 16, 1960, unless otherwise noted.

§ 89.1 Definitions.

As used in this part:

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Council" means the General Council of the Red Lake Band of the Chippewa Indians as recognized by the Secretary of the Interior.

(c) "Association" means the Red Lake Fisheries Association, incorporated under the laws of the State of Minnesota, and whose articles of incorporation and bylaws and any amendments thereto have been approved by the Council and the Secretary of the Interior.

(d) "Member of Association" means as defined in the Association By-Laws.

(e) "Commercial Fishing" means the catching of any fish for sale directly or indirectly to others than Indians on the reservations or licensed traders on the reservation for resale to Indians.

§ 89.2 Authority to engage in commercial fishing.

No person shall engage in commercial fishing in the waters of the Red Lakes on the Red Lake Indian Reservation in the State of Minnesota except the Red Lake Fisheries Association, a corporation organized and incorporated under the laws of Minnesota, and its members, and then only in accordance with the regulations in

this part. The authority hereby granted to the Association and its members to engage in commercial fishing may, at any time, be canceled and withdrawn and these regulations may be modified and amended.

§ 89.3 Authority to operate.

The association may conduct commercial fishing operations on the reservation under authority of its articles of incorporation and by-laws only in accordance with the regulations in this part.

§ 89.4 Fishing.

(a) Enrolled members of the Red Lake Band of Chippewa Indians may take fish at any time except as prohibited by § 89.6 from waters of the Red Lakes on the Red Lake Indian Reservation for their own use and for sale to: (1) Other Indians on the reservation and (2) licensed traders on the reservation for resale to Indians.

(b) Fish may be taken for commercial purposes only by the Association through members of the Association in residence on the reservation during the fishing season which shall be May 15 to November 15 inclusive. All fish taken for such purposes shall be marketed through the Association.

(c) In connection with commercial fishing, Association members fishermen may be assisted only by Indians who are members of the Red Lake Band.

§ 89.5 Disposition of unmarketable fish.

All unmarketable live fish taken under authority of these regulations must be returned to the water, and all unmarketable dead fish taken must be buried by the person taking the same.

§ 89.6 Spawning season.

Walleye and northern pike (or pickerel) shall not be taken during their spawning season except for propagation purposes.

§ 89.7 Suspension.

All commercial fishing operations may be suspended by order of the Secretary at any time.

§ 89.8 Penalty.

Any Indian violating the provisions of §§ 89.4 and 89.6 shall forfeit his right to take fish for any purpose for a period of three months.

§ 89.9 Quotas.

The Secretary may set such commercial quotas as he may find desirable, based on available biological and other information, on the amount of fish which may be taken under authority of the regulations in this part in any one season. Until otherwise determined by the Secretary, not more than 650,000 pounds of walleyes may be taken in any one fishing season.

§ 89.10 Fishing equipment limitations.

(a) Any variety of fish may be taken by enrolled members of the Band from any waters on the reservation by hook and line, and from Upper and Lower Red Lakes by gill net or entrapment gear for noncommercial use only.

(b) For commercial fishing each member of the Association shall be limited to eight gill nets of 300 feet in length and six feet in depth, of which not to exceed six of such nets may be of nylon and other synthetic material.

(c) Gill nets for taking pike shall have a mesh of not less that 3½ inches extension measure.

(d) Gill nets for taking whitefish shall have a mesh of not less than 5½ inches extension measure.

(e) Entrapment gear may only be used by members of the Association for taking fish of any variety for commercial purposes or propagation, in accordance with such specifications and directions as the manager of the Association may provide.

(f) All nets used in Red Lake Reservation waters must be marked with appropriate tags to be furnished by the Association.

§ 89.11 Royalty.

The Association shall pay five percent of the gross receipts from the sale of fish by the Association to the designated collection officer of the Bureau of Indian Affairs, which shall be deposited to the credit of the Band in the Treasury of the United States.

§ 89.12 Authority to lease.

The Band, with the approval of the Secretary, may execute a lease or permit on its fisheries plant and hatchery at Redby, Minnesota, to the Association.

PART 90—REINDEER IN ALASKA

DECLARATIONS OF OWNERSHIP

Sec.

90.1 Agent.
90.2 Filing of form.
90.3 Receipt of form.

AUTHORITY: Sec. 12, 50 Stat. 902; 48 U.S.C. 250k. Interpret or apply sec. 3, 50 Stat. 900; 48 U.S.C. 250b.

SOURCE: 22 FR 10543, Dec. 24, 1957, unless otherwise noted.

DECLARATIONS OF OWNERSHIP

§ 90.1 Agent.

The General Reindeer Supervisor at Nome, Alaska, is hereby designated as the duly authorized agent of the Secretary of the Interior, with whom all declarations of reindeer ownership required by the act of September 1, 1937 (50 Stat. 900; 48 U.S.C. 250-250p), must be filed within the time limits specified in the act.

§ 90.2 Filing of form.

Pursuant to the provisions of section 3 of the act, declarations of ownership of reindeer in Alaska should be made by claimants upon the prescribed form. This form should be executed in quadruplicate. All four copies should be submitted in person or by mail to the General Reindeer Supervisor, Nome, Alaska, who has been designated as the duly authorized agent of the Secretary of the Interior pursuant to section 3 of the aforementioned act. Envelopes contining declarations of ownership of reindeer which are mailed to said agent must bear postmarks not later than midnight of September 1, 1938, in order to meet the requirements of the law. All declarations submitted in person by the owner, or his representative, must be filed with said agent at his office at Nome, Alaska, on or before 5 o'clock p.m., September 1, 1938.

NOTE: Copies of the form mentioned may be obtained from the General Reindeer Supervisor, Nome, Alaska.

§ 90.3 Receipt of form.

Upon receipt of each person's declaration of ownership of reindeer in Alaska, the General Reindeer Supervisor shall sign the receipt thereof in the proper place in the form, and shall submit two copies of the declaration to the Commissioner of Indian Affairs, retain one copy in his record, and return one copy to the claimant. All declarations of ownership of reindeer in Alaska which are included in the records of the office of the General Reindeer Supervisor shall be kept open to public inspection in Alaska in accordance with section 3 of said act.

SUBCHAPTER I—CREDIT ACTIVITIES

PART 91—LOANS TO INDIANS FROM THE REVOLVING LOAN FUND

Sec.

91.1 Definitions.
91.2 Kinds of loans.
91.3 Eligible borrowers under United States direct loan program.
91.4 Applications.
91.5 Approval of loans.
91.6 Modification of loans.
91.7 Management and technical assistance.
91.8 Environmental and Flood Disaster Acts.
91.9 Preservation of historical and archaeological data.
91.10 Federal Reserve Regulation Z and Fair Credit Reporting Act.
91.11 Interest.
91.12 Records and reports.
91.13 Security.
91.14 Maturity.
91.15 Penalties on default.
91.16 Default on loans made by relending organizations.
91.17 Uncollectible loans made by the United States.
91.18 Uncollectible loans made by relending organizations.
91.19 Assignment of loans.
91.20 Tribal funds.
91.21 Relending by borrower.
91.22 Repayments on United States direct loans.
91.23 Repayments on loans made by relending organizations.
91.24 Approval of articles of association and bylaws.
91.25 Loans for expert assistance for preparation and trial of Indian claims.

AUTHORITY: Sec. 109, 88 Stat. 77, unless otherwise noted.

SOURCE: 40 FR 3587, Jan. 23, 1975, unless otherwise noted.

§ 91.1 Definitions.

Wherever used in the regulations in this part, the terms defined in this section shall have meanings stated:

(a) "Secretary" means the Secretary of the Interior.

(b) "Commissioner" means the Commissioner of Indian Affairs of his authorized representative.

(c) "Indian" means any person who is a member of any Indian tribe, band, group, pueblo or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in paragraph (d) of this section.

(d) "Native" means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group.

(e) "Tribe" means any Indian tribe, band, group, pueblo, or community, including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in paragraphs (f) and (g) of this section, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

(f) "Native village" means any tribe, band, clan, group, village, community, or association in Alaska listed in sections 11 and 16 of the Alaska Native Claims Settlement Act (85 Stat. 688) or which meets the requirements of this Act, and which the Secretary determines was, on the 1970 census enumeration date (as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance), composed of twenty-five or more Natives.

(g) "Native group" means any tribe, band, clan, village, community, or village association of Natives in Alaska composed of less than twenty-five Natives, who comprise a majority of the residents of the locality.

(h) "Reservation" means Indian reservations, unterminated California rancherias, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corpora-

tions, and village corporations under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688).

(i) "Economic enterprise" means any Indian-owned, commercial, industrial, agricultural or business activity established or organized for the purpose of profit, provided that eligible Indian ownership constitutes not less than 51 percent of the enterprise.

(j) "Organization" means the governing body of any Indian tribe, as defined in paragraph (e) of this section, or entity established or recognized by such governing body for the purpose of this Act.

(k) "Other organizations" means any non-Indian individual, firm, corporation, partnership, or association.

(l) "Profits" mean the net income earned after deducting operating expenses from operating revenues.

(m) "Revolving loan fund" means all funds that are now or hereafter a part of the revolving fund authorized by the act of June 18, 1934 (48 Stat. 986), the Act of June 26, 1936 (49 Stat. 1968), and the Act of April 19, 1950 (64 Stat. 44), as amended and supplemented including sums received in settlement of debts for livestock pursuant to the Act of May 24, 1950 (64 Stat. 190) and sums collected in repayment of loans made including interest or other charges on loans and any funds appropriated pursuant to Section 108 of the Indian Financing Act of 1974 (88 Stat. 77).

(n) "Relending Organization" means tribes as defined in paragraph (e) of this section, Indian credit associations and associations whose members have a common bond of occupation and/or residence which are organized for the purpose of borrowing from the revolving loan fund in order to conduct a relending program.

(o) "Default" means failure of a borrower to make scheduled payments on a loan, failure to obtain the lender's approval for disposal of assets mortgaged as security for a loan, or failure to comply with the covenants, obligations or other provisions of a loan agreement.

(p) "Mortgages" mean mortgages and deeds of trust evidencing an encumbrance of trust or restricted land, mortgages and security agreements executed as evidence of liens against crops and chattels, and mortgages and deeds of trust evidencing a lien on leasehold interests.

(q) "Financing statement" means the document filed or recorded in county or state offices pursuant to the provisions of the Uniform Commercial Code notifying third parties that a lender has a lien on the chattels and/or crops of a borrower.

(r) "Applicant" means an applicant for a United States direct loan from the revolving loan fund or a loan from a relending organization.

(s) "Cooperative Association" means an association of individuals organized pursuant to state, federal or tribal law, for the purpose of owning and operating an economic enterprise for profit, with profits distributed or allocated to patrons who are members of the organization.

(t) "Corporation" means an entity organized pursuant to state, federal or tribal law, with or without stock, for the purpose of owning and operating an economic enterprise.

(u) "Partnership" means two or more persons engaged in the same business, sharing its profits and risks, and organized pursuant to state, federal, or tribal law.

§ 91.2 Kinds of loans.

Loans from the Indian Revolving Loan Fund shall be made for purposes which will improve and promote the economic development on Indian reservations.

(a) Loans may be made by the United States to eligible relending organizations for relending to members for economic enterprises and to eligible tribes for relending to members, eligible corporations, cooperative associations, partnerships and subordinate bands and for financing tribal economic enterprises, which will promote the economic development of a reservation and/or the group or members thereon. Loans made by tribes or relending organizations may be for the following purposes:

(1) To individual Indians or Natives, cooperative associations, corporations and partnerships, to finance economic enterprises operated for profit, the operation of which will contribute to the

improvement of the economy of a reservation and/or the members thereon.

(2) To individual Indians or Natives for purposes of purchasing, constructing or improving housing on a reservation and to be occupied by the borrower.

(3) To individual Indians and Natives for purposes of obtaining a college or graduate education and degree in a field which will provide employment opportunities, provided that adequate funds are not available from sources such as grants, scholarships or other loan sources.

(4) To individual Indians and Natives for purposes of attending vocational schools which provide training in desired skills in a field in which there are employment opportunities, provided that adequate funds and/or training are not available from grant or scholarship sources, or federal or state training programs.

Loans may also be made by the United States to tribes for loaning to or investing in other organizations subject to the provisions in paragraph (d) of this section.

(b) Direct loans may be made by the United States to eligible tribes, individual Indians and Natives, corporations, partnerships or cooperative associations. Direct loans from the United States will be made for the following purposes:

(1) To eligible tribes, individual Indians, Natives, or associations thereof, corporations and partnerships, to finance economic enterprises operated for profit, the operation of which will contribute to the improvement of the economy of a reservation and/or the members thereon.

(2) To individual Indians and Natives for purposes of purchasing, constructing or improving housing on a reservation and to be occupied by the borrower.

(3) To individual Indians and Natives for purposes of obtaining a college or graduate education and degree in a field which will provide employment opportunities, provided that adequate funds are not available from sources such as grants, scholarships or other loan sources.

(4) To individual Indians and Natives for purposes of attending vocational schools which provide training in desired skills in a field in which there are employment opportunities, provided that adequate funds and/or training are not available from grants or scholarship sources or federal or state training programs.

(c) Before a United States direct loan is approved, the Commissioner may require the applicants to prepare a market and capacity report on existing or proposed economic enterprises for which financing is requested if the operation involves manufacturing, selling or providing services.

(d) Loans may be made to eligible tribes and Indian organizations for use in attracting industries and economic enterprises, the operation of which will contribute to the economy of a reservation. Tribes and Indian organizations may receive loans from the revolving loan fund for investment in or lending to other organizations regardless of whether they are organizations of Indians. However, not more than 50 percent of the loan made to an Indian organization may be used for the purpose of making a loan to or investing in other organizations. Applications for loans to provide funds for lending to or investing in other organizations already in operation will be accompanied by: (1) Audited balance sheets and operating statements of the other organization for the immediate three preceding years; (2) pro forma operating statement and balance sheets for the succeeding three years reflecting the results of operations after injection of the additional funds; (3) names of owners or if a corporation and stock has been issued, names of major stockholders and shares of stock owned by each; (4) a copy of the articles of incorporation and bylaws, if incorporated, or other organization papers if not incorporated; (5) names of members of the board of directors and officers with a resume of education and experience, and the number of shares of stock owned by each in the corporation; (6) purposes for which loan or investment will be used; and (7) if for manufacturing, selling or providing services, a market and capacity report will be prepared. If a proposed operation is to be established, the information in paragraphs (d) (2) through (7)

of this section will be furnished. The Commissioner may require additional information on the other organization, if needed, to adequately evaluate the benefits which the Indian organization will receive and the economic benefits which will accrue to a reservation. If the loan is for relending to another organization, the application must show what security is being offered. If the loan is for investment in another organization, the equity to be obtained must be shown. Copies of all agreements, contracts or other documents to be executed by the Indian organization and the other organization in connection with a loan or investment shall be submitted with the application for a loan and will require Commissioner approval prior to disbursement of loan funds to the Indian organization.

§ 91.3 Eligible borrowers under United States direct loan program.

(a) Loans may be made from the revolving loan fund to eligible tribes and relending organizations, and corporations, cooperative associations and partnerships, having a form of organization satisfactory to the Commissioner. Individual Indians and Natives who are members of tribes which are not making loans to its members and are not members of or eligible for membership in an organization which is making loans to its members, are eligible for United States direct loans. Loans may be made to applicants only when, in the judgment of the Commissioner, there is a reasonable prospect of repayment. Loans may be made only to an applicant who, in the opinion of the Commissioner, is unable to obtain financing on reasonable terms and conditions from other sources such as banks, Farmers Home Administration, Small Business Administration, Production Credit Associations, Federal Land Banks, and is also unable to obtain a guaranteed or insured loan pursuant to Title II of the Indian Financing Act of 1974 (88 Stat. 77).

(b) The establishment of a United States direct revolving loan program on a reservation(s) for making direct loans will require the approval of the Commissioner. All requests for establishing a United States direct revolving loan program on a reservation will be accompanied by reasons for need, estimate of financing needs, and other sources of financing available to meet the needs. The Commissioner, in approving a United States direct loan program, may require the preparation and approval of a plan of operation for conducting the program.

(c) If local lending conditions and/or the information in an application for a loan indicate a probability that an applicant may be able to obtain the loan from other sources, the Commissioner, before approving a United States direct loan, will require the applicant to furnish letters from two customary lenders in the area who are making loans for similar purposes, stating whether or not they are willing to make a loan to the applicant for the same purposes and amount. If a customary lender will make the loan on reasonable terms and conditions, the Commissioner will not approve a United States direct loan.

§ 91.4 Applications.

An applicant for a United States direct loan or a loan from a relending organization conducting a relending program under this Part will submit an application on a form approved by the Commissioner. Applications will indicate the amount of the loan requested, purposes for which loan funds will be used, security to be offered, the period of the loan, assets and liabilities of the applicant, procedures to be followed in handling loan proceeds, repayment of the loan, budgets reflecting income and expenditures of the applicant, and any other information required to adequately evaluate the application. In addition, applications for loans to finance economic enterprises already in operation will be accompanied by: (a) A copy of operating statements, balance sheets and budgets for the prior two operating years or applicable period thereof preceding submittal of the application; (b) current budget, balance sheet and operating statements; and (c) pro forma budgets operating statements and balance sheets showing the estimated results for operating the enterprise for two years after injection of

the loan funds into the operation. A resume of the applicant's management experience will be submitted with the application. Applications for loans and requests for advance of tribal trust funds for relending under the provisions of this Part shall be accompanied by a declaration of policy and plan of operation or other acceptable plan for conducting the program. Applications for loans or modifications thereof, to establish, acquire, operate, or expand an economic enterprise shall be accompanied by a plan of operation. Declarations of policy or other plans for conducting a relending program and plans of operation for economic enterprises require the approval of the Commissioner before becoming effective. An application from a corporation, partnership or cooperative association, for a United States direct loan or a loan under a relending program for financing an economic enterprise must, in addition to financial statements and budgets, include a copy of documents establishing the entity, or the proposed documents to be used in establishing it.

§ 91.5 Approval of loans.

(a) Loan agreements, including those used by relending organizations in operating a relending program, must be executed on a form approved by the Commissioner. On direct United States loans, the Commissioner will approve the loan by issuing a commitment order covering the terms and conditions for making the loan.

(b) Applications for loans from relending organizations must be approved, if a tribe, by the governing body or designated committee, or other approving committee or body authorized to act on credit matters for a relending organization, before the Commissioner takes action on the application. This designated governing body of the tribe or committee must be authorized to act on behalf of the relending organization as evidenced in the organization's declaration of policy and plan of operation.

(c) Corporations, partnerships and cooperative associations organized for the purpose of establishing, acquiring, expanding, and operating an economic enterprise shall be organized pursuant to federal, state or tribal law. The form of organization shall be acceptable to the Commissioner. Economic enterprises which are or will be operated on a reservation(s) must comply with the requirements of applicable rules, resolutions and ordinances enacted by the governing body of the tribe.

§ 91.6 Modification of loans.

(a) *United States direct loans.* Any modification of the terms and provisions of a United States direct loan agreement must be requested in writing by the borrower and approved by the Commissioner. The borrower will submit the request for modification and will indicate the section(s) of the loan agreement to be modified together with a justification for the modification. Requests for modifications of loan agreements will include an agreement to abide by the provisions of the regulations in this Part and future amendments and modifications thereof.

(b) *Relending program.* Any modification of the terms and provisions of a loan agreement of a borrower from an organization conducting a relending program must be in writing, agreed to by the borrower, and must be approved by the body authorized to act on loans and modifications thereof as provided in an approved declaration of policy and plan of operation or other plan. If a request for modification of a loan has been disapproved by the body authorized to act on the request, the rejected borrower may request the Commissioner to make a direct loan from the revolving loan fund if the Commissioner determines that the rejection is unwarranted.

§ 91.7 Management and technical assistance.

Concurrent with the approval of a United States direct loan to finance an economic enterprise, the Commissioner will assure under Title V of the Indian Financing Act of 1974 that competent management and technical assistance is available to the borrower consistent with the borrower's knowledge and experience and the nature and complexity of the economic enterprise being financed. Assistance may

be provided by available Bureau of Indian Affairs staff, other government agencies, including states, the tribe or other sources which the Commissioner considers competent to provide needed assistance. Contracting for management and technical assistance may be used only when adequate assistance is not available without additional cost. Contracts for providing borrowers with competent management and technical assistance shall be in accordance with applicable Federal Procurement Regulations and the Buy Indian Act of April 30, 1908, chapter 153 (35 Stat. 71), as amended June 25, 1910, chapter 431, section 25 (36 Stat. 861).

§ 91.8 Environmental and Flood Disaster Acts.

Loans will not be approved until there is assurance of compliance with any applicable provisions of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234, 87 Stat. 975), the National Environmental Policy Act of 1969 (Pub. L. 91-190), (42 U.S.C. 4321) and Executive Order 11514.

§ 91.9 Preservation of historical and archeological data.

(a) On United States direct loans from the revolving loan fund and modifications thereof to provide additional loan funds which will involve excavations, road or street construction, land development or disturbance of land on known or reported historical or archeological sites, the Commissioner will take or require appropriate action to assure compliance with the applicable provisions of the Act of June 27, 1960 (74 Stat. 220; (16 U.S.C. 469)), as amended by the Act of May 24, 1974 (Pub. L. 93-291, 88 Stat. 174).

(b) On loans made by relending organizations conducting a relending program using revolving loan funds, the body authorized to act on loan applications and modifications thereof will, at the time of taking action on a loan or request for modification, inform the applicant of the applicability of this Act to the loan and advise the Commissioner of compliance or the need to obtain compliance.

§ 91.10 Federal Reserve Regulation Z and Fair Credit Reporting Act.

(a) United States direct loans and loans made by a relending organization are subject to the provisions of Federal Reserve Regulation Z (Truth In Lending, 12 CFR Part 226; Pub. L. 91-508, 84 Stat. 1127). Economic enterprises which extend credit and require payment of finance charges on unpaid balances will determine the applicability of Regulation Z and comply with the requirements thereof. The Commissioner will issue any necessary instructions to assure compliance with Regulation Z on United States direct loans.

(b) Relending organizations, through their committee or other body authorized to act on loan matters on its behalf, will assure compliance with the applicable provisions of this Act.

(c) The Commissioner will require adherence to the provisions and requirements of Title VI of the Fair Credit Reporting Act in making United States direct loans. Relending organizations, through the body authorized to act on credit matters, will require compliance with the requirements of the Fair Credit Reporting Act.

§ 91.11 Interest.

(a) The interest to be charged on loans by the United States shall be at a rate determined by the Secretary of the Treasury in accordance with section 104, Title I, of the Indian Financing Act of 1974 (Pub. L. 93-262, 88 Stat. 77). The interest rate shall be determined monthly and shall be effective on advances made on loans during the current calendar month. The interest rate shall be stated in the promissory note(s) executed by the borrower(s) evidencing the advance(s).

(b) Additional charges to cover loan administration costs may be determined and charged borrowers.

(c) Educational loans may provide for waiver of interest accruals while the borrower is in school or in military service. Interest shall start on the first day of the month following one year from the date of completion of the educational course or receipt of a degree for which the loan was made. If

the course is not completed, interest shall start on the first day of the month following the date the borrower drops out of school. For borrowers in the military service, interest will start on the first day of the month following discharge from service, or following completion of his or her initial enlistment term or four years, whichever is less. Military service for the purpose of this paragraph does not include activities or service in a reserve unit or National Guard which is intermittent or of a duration of less than six months.

(d) The interest rate on loans made by relending organizations which are conducting relending programs shall not be less than the rate the organization pays on its loan(s) from the United States. Relending organizations which adopt and follow the same procedure in calculating interest on educational loans as is followed on educational loans made by the United States, will not be charged interest on loans from the United States on the amount outstanding on educational loans during the period the organization is not charging its borrowers interest.

(e) Interest rates on loan advances made by the United States as shown on promissory notes dated before April 12, 1974, will remain in effect until the loan is paid in full, refinanced, or modified to extend the repayment terms. Unless otherwise specifically provided in a loan contract, the interest rate on advances made after April 12, 1974, will be at a rate determined pursuant to section 104 of Title I of the Indian Financing Act of 1974. The interest rate on loans for expert assistance will be at a rate established in § 91.25 herein.

§ 91.12 Records and reports.

Loan agreements between the United States and tribes, corporations, partnerships, cooperative associations and individual Indians for financing economic enterprises, and to relending organizations, will require that borrowers establish and maintain accounting and operating records that are satisfactory to the Commissioner and submit written reports as required by the Commissioner. The records, accounts, and loan files shall be available for examination and audit by the Commissioner at any reasonable time. Unless an exception is approved by the Commissioner, borrowers will be required to have an annual audit made of the records of relending programs and economic enterprises financed with revolving loan funds, by a certified public accountant or a firm of certified public accountants or other qualified public accountants satisfactory to the Commissioner.

§ 91.13 Security.

(a) United States direct loans shall be secured by such security as the Commissioner may require. A lack of security will not preclude the making of a loan if the proposed use of the funds is sound and the information in the application and supporting papers correctly show that expected income will be adequate to pay all expenses and the loan principal and interest payments, indicating reasonable assurance that the loan will be repaid. Loans made by relending organizations conducting a relending program using revolving loan funds will require borrowers to give security for loans, if available, but the absence of security will not preclude the making of a loan if the proposed use of the funds is sound and the information in the application and supporting papers correctly show that expected income will be adequate to pay all expenses and the loan principal and interest payments, indicating reasonable assurance that the loan will be repaid. The declaration of policy and plan of operation of relending organizations conducting relending programs will include provisions covering the type and amount of security to be taken to secure loans made.

(b) Land purchased by an individual Indian with the proceeds of a loan and land already held in trust or restricted status by the individual Indian may be mortgaged as security for a loan in accordance with 25 CFR 121.34 and the Act of March 29, 1956 (70 Stat. 62; (25 U.S.C. 483a)). Mortgages of individually held trust or restricted land will include only an acreage of the borrower's land which the Commissioner determines is necessary to protect the

loan in case of default. On proposed foreclosures which involve the sale of individually held trust or restricted land given as security for a loan, the tribe of the reservation on which the land is located will be notified in writing at least thirty calendar days in advance of the anticipated date of sale. Land purchased by a tribe with the proceeds of a loan from the revolving loan fund with title taken in a trust or restricted status, and land already held in a trust or restricted status by a tribe may not be mortgaged as security for a loan.

(1) Title to any land purchased by a tribe or by an individual Indian with revolving loan funds may be taken in trust or restricted status unless the land is located outside the boundaries of a reservation or a tribal consolidation area approved by the Secretary. Title to any land purchased by a tribe or an individual Indian which is outside the boundaries of a reservation or approved consolidation area may be taken in trust if the purchaser was the owner of trust or restricted interests in the land before the purchase. Otherwise, title shall be taken in the name of the purchaser without any restrictions on alienation, control, or use.

(c) Mortgages of leasehold interests in land held in trust or restricted status by an individual Indian, may be taken for the purpose of borrowing capital for the development and improvement of the leased premises when permitted in the lease or lease modification agreement. Such mortgages must be approved by the lessor and Commissioner. (70 Stat. 62, (25 U.S.C. 483a)).

(d) Individuals may give assignments of income from trust property as security for loans. Tribes may give assignments of trust income as security for loans provided that the assignment shall be specific as to the source(s) of income being assigned. All assignments of trust income require approval by the Commissioner before becoming effective.

(e) Chattels may be given as security for a loan. A mortgage on chattels, the title to which is known to be in trust, requires Commissioner approval. Non-trust chattels may be mortgaged without approval of any federal official.

(f) Crops grown on lands held in trust or restricted status for the benefit of an individual Indian may be given as security for a loan when approved by the Commissioner. Crops grown on leased, trust or restricted land may be given as security for a loan when permitted by the provisions of a lease or when the owner gives written consent. Approval of the lien document by the Commissioner is required. Crops grown on trust or restricted land held by a tribe which has been assigned to an individual for use may be given as security for a loan, provided the terms of the assignment permit the assignee to give the crops as secuirty for a loan or the tribe's governing body specifically gives consent. The lien document requires Commissioner approval. Crops grown on non-trust or non-restricted land may be mortgaged without the approval of any federal official.

(g) Title to any personal property purchased with a loan shall be taken in the name of the purchaser and mortgaged to secure the loan unless the loan is otherwise adequately secured. Tribes must adhere to the provisions of their constitutions and bylaws, corporate charters, or other organizational documents when mortgaging tribal property and assigning trust income as security for loans.

(h) Relending organizations receiving a loan from the United States for relending shall be required to assign to the United States as security for the loan all securities acquired in connection with loans made to its members, sub-organizations, or associations from such funds, unless the Commissioner determines that repayment of the loan to the United States is otherwise reasonably assured. Funds advanced to finance a tribal economic enterprise shall be secured by an assignment of net income and net assets of the economic enterprise, unless the Commissioner determines that it is not feasible to require an assignment or that repayment of the loan to the United States is otherwise reasonably assured.

(i) Securing documents or financing statements shall be filed or recorded in accordance with applicable state or federal laws except for those customarily filed in Bureau of Indian Affairs

offices. Mortgages on documented vessels will be filed at the customs house designated as the home port of the vessel as shown on the marine document.

§ 91.14 Maturity.

The maturity of any United States direct loan shall not exceed thiry years. Loans made will be scheduled for repayment at the earliest possible date consistent with the purpose of the loan and the repayment capacity of the borrower.

§ 91.15 Penalties on default.

Unless otherwise provided in the loan agreement between the United States and a borrower, failure on the part of a borrower to conform to the terms of the loan agreement will be deemed grounds for the taking of any one or all of the following steps by the Commissioner:

(a) Discontinue any further advance of funds contemplated by the loan agreement.

(b) Take possession of any or all collateral given as security and in the case of individuals, corporation, partnerships or cooperative associations, the property purchased with the borrowed funds.

(c) Prosecute legal action against the borrower or against officers of corporations, tribes, bands, credit associations, cooperative associations, and other organizations.

(d) Declare the entire amount advanced immediately due and payable.

(e) Prevent further disbursement of credit funds under the control of the borrower.

(f) Withdraw any unobligated funds from the borrower.

(g) Require relending organizations conducting a relending program to apply all collections on loans to liquidate the debt to the United States.

(h) Take possession of the assets of a relending organization conducting a relending program and exercise or arrange to exercise its powers until the Commissioner has received acceptable assurance of its repayment of the revolving loan and compliance with the provisions of the terms of the loan agreement.

(i) Liquidate, operate or arrange for the operation of economic enterprises financed with revolving loans made to individuals, tribes, corporations, partnerships and cooperative associations until the indebtedness is paid or until the Commissioner has received acceptable assurance of its repayment and compliance with the terms of the loan agreement.

§ 91.16 Default on loans made by relending organizations.

Relending organizations conducting relending programs using revolving loan funds will follow prudent lending practices in making and servicing loans and take appropriate actions to protect their interests in the security given to secure repayment of loans. Declarations of policy and plans of operation shall include procedures which will be followed in acting to correct a default, such as modification of loan agreement or foreclosure and liquidation of security. Relending organizations employing a general counsel will refer legal questions on foreclosure procedures and sale of security to their counsel.

§ 91.17 Uncollectible loans made by the United States.

If the Secretary determines that a United States direct loan is uncollectible in whole or in part or is collectible only at an unreasonable cost or when such actions would in his judgment be in the best interest of the United States, he may cancel, adjust, compromise, or reduce the amount of any loan or any portion of any loan made from the revolving loan fund. The Commissioner may adjust, comprise, subordinate or modify the terms of any mortgage, lease, assignment, contract, agreement or other document taken as security for loans. The cancellation of all or part of a loan shall be effective only after the following steps have been taken:

(a) The Secretary submits to the Congress a report on adjustments made during the preceding fiscal year with recommendations for cancellations for the current fiscal year.

(b) Congress by concurrent resolution approves the cancellation within

sixty legislative days after receipt of the report and recommendations or,

(c) Congress does not take action approving or disapproving the cancellation within sixty legislative days after receipt of the report.

(47 Stat. 564 (25 U.S.C. 386a))

§ 91.18 Uncollectible loans made by relending organizations.

(a) Relending organizations conducting relending programs using revolving loan funds may, when approved by the Commissioner, chargeoff as uncollectible all or part of the balance of principal and interest owing on loans which are considered to be uncollectible. Usually a chargeoff includes both principal and interest and provides for cessation of interest accruals on the principal balance owing as of the date of the chargeoff.

(b) Action to chargeoff a loan will be in the form of a resolution enacted by the committee or body authorized and responsible for actions on loan matters for the relending organization. Before action is taken to chargeoff a loan as uncollectible, the lender will make an effort, to the extent feasible, to liquidate the security given for a loan and apply the net proceeds as a repayment on the balance of principal and interest owed. The chargeoff of a loan by a relending organization as uncollectible will not reduce the principal balance owed to the United States. A chargeoff will not release the borrower of the obligation or the responsibility to make payments when his or her financial situation will permit. Chargeoff action will not release the lender of responsibility to continue its efforts to collect the loan.

§ 91.19 Assignment of loans.

A borrower of a direct loan from the United States may not assign the loan agreement or any interest in it to a third party without the consent of the Commissioner. Relending organizations which are conducting relending programs may not assign the loan agreements of borrowers, or any interest therein, to third parties without the approval of the Commissioner and the borrower.

§ 91.20 Tribal funds.

(a) Tribal trust funds may be advanced to tribes when authorized by Congress, requested by the governing body, and approved by the Commissioner for the establishment, operation or expansion of economic enterprises and for relending in accordance with paragraphs (b) and (c) of this section and § 91.21 herein. No interest shall be paid to the United States on such funds. The Commissioner may require the tribe to prepare a plan of operation for the enterprise and a plan establishing the policies and procedures for making loans to members from tribal funds.

(b) Support loans may be made to old, indigent or disabled members and loans may be made to cover burial expenses of members when there is reasonable assurance that the loans will be repaid. Interest may be waived on such loans. These loans, unless otherwise authorized by the Commissioner, shall be accounted for separately by the tribe and administered under a separate plan of operation from the plans governing housing, business, education and agricultural loans.

(c) In order for individuals to be eligible for loans from tribal funds, they must be members of the tribe to which the funds belong.

(d) Failure of a tribe to use tribal funds advanced under paragraph (a) of this section in accordance with the regulations and purposes for which requested shall be grounds for any or all of the following steps to be taken by the Commissioner:

(1) Discontinue further advance of funds requested.

(2) Require that the entire amount advanced be returned to the Treasury.

(3) Prevent further disbursement of tribal funds in the account of an economic enterprise or tribal relending program under the control of the tribe.

(4) Withdraw any unobligated funds from the tribe and deposit the same in the Treasury.

(5) Require that all repayments on loans made by the tribe be used to replace funds advanced to the tribe from the Treasury.

(6) In the case of tribal economic enterprises operated with tribal funds,

liquidate, operate or arrange for the operation of the enterprise until all tribal trust funds advanced to the tribe have been replaced in the tribe's United States Treasury account, or until the Commissioner has received acceptable assurance that the funds will be replaced or that the enterprise will be operated in a manner satisfactory to him.

§ 91.21 Relending by borrower.

(a) A relending organization may reloan funds loaned to it by the United States with the approval of the Commissioner. The Commissioner may authorize such lenders to approve applications for particular types of loans up to a specified amount.

(b) Loans shall be secured by such securities as the lender and the Commissioner may require. With the Commissioner's approval, mortgages of individually held trust or restricted land, leasehold interests, chattels, crops grown on trust or restricted land, and assignments of trust income may all be taken as security for loans.

(c) Title to personal property purchased with loans received from relending organizations using revolving loan funds in its relending program shall be taken in the name of the borrower.

(d) The term of a loan made by a relending organization conducting a relending program shall not extend beyond the maturity date of its loan from the United States, unless an exception is approved by the Commissioner and the organization has funds available from which to make scheduled repayment on its loan from the United States. Loans made will be scheduled for repayment at the earliest possible date consistent with the purpose for which a loan is made and the indicated repayment capacity of the borrower.

(e) When a relending organization making loans to its members from moneys borrowed from the United States rejects a loan application from an eligible member, the Commissioner may, in his discretion, make a direct loan from the revolving fund to the applicant if he determines the rejection is unwarranted. In making this determination, the Commissioner will review in detail the reasons why the organization rejected the application; the soundness and feasibility of the applicant's proposal; the applicant's repayment ability, industry and work habits; whether the applicant can obtain licenses or permits required by the tribe; and assurance that the applicant has or can obtain the use of land required, if a loan is approved.

(f) Securing documents or financing statements shall be filed or recorded in accordance with federal or state law except those customarily filed in Bureau of Indian Affairs offices. Mortgages on documented vessels will be filed at the custom house designated as the home port of the vessel as shown on the marine document.

§ 91.22 Repayments on United States direct loans.

Repayments on United States direct loans shall be made to the authorized collection officer of the Bureau of Indian Affairs who shall issue an official receipt for the repayment and deposit the collection into the revolving loan fund. Collections will first be applied to pay interest to date of payment and the balance applied on the principal installment due. Collections on loans made by relending organizations which have been declared in default in which the Commissioner has taken control of the assets of the program (including loans made with balances owing) will be made to an authorized collection officer of the Bureau of Indian Affairs who shall issue a receipt to the payor and deposit the collection in the United States revolving loan fund. The relending organization's loan from the United States will be credited with the amounts collected from its borrowers, with the collections applied first on interest accrued and the balance applied to the principal. Payments on United States direct loans may be made in advance of due dates without penalty.

§ 91.23 Repayments on loans made by relending organizations.

Repayments on loans made by a relending organization conducting a relending program will be made to the officers of the lending organization or individuals designated and authorized

in a declaration of policy and plan of operation. Collections on loans and other income to a relending program will be deposited in the lender's revolving loan account as designated in a declaration of policy and plan of operation. Collections on loans will be first applied to pay interest to date of payment with the balance applied to the principal.

§ 91.24 Approval of articles of association and bylaws.

Articles of association and bylaws of relending organizations and cooperative associations require approval of the Commissioner if they make application for a revolving credit loan.

§ 91.25 Loans for expert assistance for preparation and trial of Indian claims.

(a) Loans may be made to Indian tribes, bands and other identifiable groups of Indians from funds authorized and appropriated under the provisions of section 1 of the Act of November 4, 1963 (Pub. L. 88-168, 77 Stat. 301; 25 U.S.C. 70n-1), as amended by the Act of September 19, 1966 (Pub. L. 89-592, 80 Stat. 814) and section 2 of the Act of May 24, 1973 (Pub. L. 93-37, 87 Stat. 73). Loan proceeds may only be used for the employment of expert assistance, other than the assistance of counsel, for the preparation and trial of claims pending before the Indian Claims Commission. Applications for loans will be submitted on forms approved by the Commissioner and shall include a justification of the need for a loan. The justification shall include a statement from the applicant's claims attorney regarding the need for a loan. The application will be accompanied by a statement signed by an authorized officer of the applicant certifying that the applicant does not have adequate funds available to obtain and pay for the expert assistance needed. The Superintendent and the Area Director will attest to the accuracy of the statement or point out any inaccuracies. Loans will be approved by issuance of a commitment order by the Commissioner.

(b) No loan shall be approved if the applicant has funds available on deposit in the United States Treasury or elsewhere in an amount adequate to obtain the expert assistance needed or if, in the opinion of the Commissioner, the fees to be paid the experts are unreasonable on the basis of the services to be performed by them.

(c) Contracts for the employment of experts are subject to the provisions of 25 U.S.C. 81 and require approval by the Commissioner.

(d) Vouchers or claims submitted by experts for payment for services rendered and reimbursement for expenses will be in accordance with the provisions of the expert assistance contract and shall be sufficiently detailed and itemized to permit an audit to determine that the amounts are in accordance with the contract. Vouchers or claims shall be reviewed by the borrower's claims attorney who will certify on the last page of the voucher or by attachment thereto, that the services have been rendered and payment is due the expert and that expenses and charges for work performed are in accordance with the provisions of the contract.

(e) Requests for advances under the loan agreement shall be accompanied by a certificate signed by an authorized officer of the borrower certifying that the borrower does not have adequate funds available from its own financial resources with which to pay the expert. The Superintendent and Area Director will attest to the accuracy of the statement or point out inaccuracies. A copy of the voucher or claim from the expert will accompany the request for advance.

(f) Loan funds will be advanced only as needed to pay obligations incurred under approved contracts for expert assistance. The funds will be deposited in a separate account, shall not be commingled with other funds of the borrower, and shall not be disbursed for any other purpose.

(g) Loans shall bear interest at the rate of 5½ percent per annum from the date funds are advanced until the loan is repaid.

(h) The principal amount of the loan advanced plus interest shall be repayable from the proceeds of any judgment received by the borrower at the time funds from the award become available to make the payment.

(77 Stat. 301 (25 U.S.C. 70n-1 to 70n-7))

PART 92—REVOLVING CATTLE POOL

Sec.
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AUTHORITY: 5 U.S.C. 301. Interpret or apply secs. 1, 2, 64 Stat. 190; 25 U.S.C. 442, 443.

SOURCE: 22 FR 10545, Dec. 24, 1957, unless otherwise noted.

§ 92.1 Definitions.

Wherever used in the regulations in this part, the terms defined in this section shall have the meaning stated.

(a) "Secretary" means Secretary of the Interior.

(b) "Commissioner" means Commissioner of Indian Affairs.

(c) "Corporation" means an Indian corporation chartered under section 17 of the act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).

(d) "Tribe" means an unincorporated Indian tribe or band. A tribe shall be deemed to include any band, pueblo, or group of Indians residing on one reservation having a form of organization recognized by the Commissioner.

(e) "Loans" mean both loans of cattle repayable in kind and assignments of cattle under agreements requiring maintenance of the number and other operating conditions.

(f) "Corporate enterprise" means a business operated by a corporation.

(g) "Tribal enterprise" means a business operated by a tribe.

(h) "Area Director" means the officer in charge of the area office of the Indian Service, or his successor in office, under which the borrower is placed for administrative purposes. The authority of the Area Director under the regulations in this part may be delegated by him in writing to his subordinates in the area office.

(i) "Superintendent" means the Superintendent of the Indian Agency under which the borrower is operating.

§ 92.2 Purpose of part.

The purpose of the regulations in this part is to prescribe the terms and conditions of loans by cattle by the United States to corporations and tribes, and loans of cattle by a corporation or tribe to its members. All loans shall be for the purpose of promoting the economic development of the borrower. Sections 92.3 to 92.19, inclusive, shall govern loans of cattle by the United States. Loans of cattle by corporations and tribes originating in loans of cattle to such organizations by the United States, or purchased with cash loans or advances of tribal industrial assistance funds under the regulations in Part 91 of this chapter, shall be governed by the provisions of § 92.20.

§ 92.3 Eligible borrowers.

Loans of cattle may be made only to corporations and tribes.

§ 92.4 Application.

The application shall be submitted on a form approved by the Commissioner, and shall indicate the period of the loan, the interest, if any, to be paid, the security offered, and the procedures to be followed in handling and repaying the loan.

§ 92.5 Purpose of loans.

Cattle loaned to corporations and tribes may be used in the operation of corporate or tribal enterprises and to make loans to individual members, in order to promote the economic development of the group or individual.

§ 92.6 Approval of loans.

All loans of cattle shall require the approval of the Commissioner. Loan agreements must be executed on a form approved by the Commissioner. Applications may be approved either as submitted, or by issuance of com-

mitment orders covering the terms and conditions of making the loans. Commitment orders shall be unconditionally accepted by borrowers.

§ 92.7 Modifications.

Modifications of loan agreements shall be handled through the same channels as the original agreements.

§ 92.8 Interest.

Interest may be charged on loans of cattle by the United States at a rate as nearly equivalent as possible to one head for each ten head loaned for a period not exceeding twenty-five years.

§ 92.9 Records and reports.

Corporations and tribes shall keep separate records and accounts of their cattle loans, and make reports as directed by the Commissioner.

§ 92.10 Maturity.

The period of maturity of loans of cattle shall be determined according to the circumstances, except that twenty-five years shall be the maximum.

§ 92.11 Security.

Corporations and tribes shall furnish security, if available, up to an amount adequate to protect the loan. Loans may be secured by the assignment of notes, chattel mortgages, income, liens (except on trust or restricted land), and such other securities as the Commissioner may require.

§ 92.12 Title.

Title to all cattle loaned to corporations and tribes, the increase therefrom, cattle received in repayment of loans made by the corporations and tribes, and any "lieu" cattle to replace animals loaned, shall be in the United States in trust for the corporation or tribe until the cattle are loaned to individual members under the provisions of § 92.20.

§ 92.13 Branding.

All cattle loaned by the United States for use in corporate or tribal enterprises shall be branded or marked "ID" and with the brand or mark of the enterprise. All cattle loaned by the United States for relending under the provisions of § 92.20 shall not be branded or marked "ID".

§ 92.14 Penalties on default.

Unless otherwise provided in the loan agreement, failure of a corporation or tribe to conform to the terms of its loan agreement will be deemed grounds for any one or all of the following steps to be taken by the Commissioner:

(a) Take possession of any or all collateral given as security.

(b) Prosecute legal action against the corporation or tribe or against officers of the corporation or tribe.

(c) Declare the loan immediately due and payable.

(d) Prevent further loans of cattle under the control of the corporation or tribe, repossess any cattle which have not been reloaned, and require that repayments on loans made by the corporation or tribe be applied to liquidate its indebtedness to the United States.

(e) In the case of corporate and tribal enterprises, liquidate or operate, or arrange for the operation of the enterprise until its indebtedness is paid, or until the Commissioner has received acceptable assurance of its repayment and of compliance with the loan agreement.

§ 92.15 Assignment.

A corporation or tribe may not assign its loan agreement or any interest therein to a third party without the written consent of the Commissioner.

§ 92.16 Sales and exchanges.

Superintendents may grant corporations and tribes permission to sell or exchange cattle for which repayment has not been made, provided the interest of the United States in the loan will not be jeopardized.

§ 92.17 Repayments.

Repayments of cattle to the United States shall be made to a bonded Government disbursing agent or his authorized representative, who shall issue receipts for all such payments. With the prior approval of the Commissioner, cattle repaid to the United

States may be sold under applicable authority governing the sale of Government-owned property.

§ 92.18 Cash settlements.

When authorized by the Commissioner, corporations, tribes, cooperative associations, and individual Indians indebted to the United States for loans of cattle, may settle obligations in cash in lieu of cattle, and any obligation payable in cattle which is not yet due may be converted to a cash obligation. The value of the livestock for the purpose of any such cash settlement or conversion shall be based on prevailing market prices in the area and shall be ascertained by a committee composed of three members, one of whom shall be selected by the superintendent, one of whom shall be selected by the chairman of the tribal council, and one of whom shall be selected by the other two members.

§ 92.19 Deposit of funds.

The proceeds of the sales of cattle repaid to the United States, and of cash accepted in lieu of cattle, shall be deposited in the United States Treasury to the credit of the revolving fund established pursuant to the acts of June 18, 1934 (48 Stat. 986), and June 26, 1936 (49 Stat. 1967), as amended and supplemented, in accordance with instructions of the Commissioner.

§ 92.20 Relending by corporations and tribes.

Corporations and tribes receiving either loans of cattle from the United States, or cash loans from the revolving credit fund and advances of tribal industrial assistance funds under the regulations in Part 91 of this chapter, for the purchase of cattle for relending to members, may make loans of cattle as follows:

(a) *Purpose.* All loans shall be to promote the economic development of the borrower.

(b) *Eligibility.* Loans may be made to individual members of the corporation or tribe of one-quarter or more degree of Indian blood, except that individuals need not be of at least one-quarter degree of Indian blood in order to receive loans of cattle purchased with tribal industrial assistance funds.

(c) *Application.* The application shall be on a form approved by the Commissioner.

(d) *Approval.* All loans shall require approval of the Area Director unless the Commissioner authorizes the Superintendent, the corporation, or the tribe to approve loans up to a specified number of cattle. Loan agreements must be executed on a form approved by the Commissioner. Applications shall be approved as submitted, or by the issuance of a commitment order covering the terms and conditions of making the loan. Commitment orders shall be unconditionally accepted by borrowers.

(e) *Modifications.* Modifications of loan agreements shall be handled through the same channels as the original loan agreement.

(f) *Interest.* Interest may be charged at a rate as nearly equivalent as possible to one head for each ten head loaned for a period not exceeding eight years.

(g) *Maturity.* Ten years shall be the maximum on loans of cattle.

(h) *Security.* Borrowers shall mortgage all cattle borrowed from a corporation or tribe to the lender as security for any unpaid indebtedness, unless the Area Director determines that the repayment of such indebtedness is otherwise reasonably assured. Mortgages shall be filed in accordance with State law. Borrowers shall furnish other security, if available, up to an amount adequate to protect the loan. Liens on trust or restricted land may be taken as security.

(i) *Title.* Title to all cattle loaned shall be in the name of the borrower.

(j) *Branding.* All cattle loaned, the increase therefrom, and any "lieu" cattle replacing animals loaned shall be branded or marked with the brand or mark of the borrower.

(k) *Penalties on default.* Unless the loan agreement otherwise provides, failure on the part of a borrower to conform to the terms of the loan agreement will be deemed grounds for any one or all of the following steps to be taken at the option of the lender:

(1) Take possession of any or all collateral given as security, and, in ac-

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cordance with State law, the cattle loaned, increase therefrom and any "lieu" cattle replacing animals loaned.

(2) Prosecute legal action against the borrower.

(3) Declare the loan immediately due and payable.

(l) *Assignment.* A borrower may not assign a loan agreement or any interest therein to a third party without the consent of the lender.

(m) *Sales and exchanges.* The lender, with the approval of Superintendent, may grant borrowers permission to sell or exchange cattle for which repayment has not been made, provided the interests of the lender in the loan will not be jeopardized. Partial releases in connection with such transactions shall be filed in accordance with State law.

(n) *Repayments.* Repayments shall be made to an authorized representative of the lender, who shall issue receipts for all repayments. With the approval of the Superintendent, lenders may accept from borrowers, their heirs, successors, or assigns, cash in lieu of cattle. Cash repayments shall be used for the purchase of suitable replacements by the corporation or tribe, unless otherwise authorized by the Area Director.

(o) *Number loaned.* Indian boys and girls enrolled in 4-H Club work may receive loans of from one to ten head of cattle for use in connection with their club projects. Other borrowers may receive loans of not less than ten head nor more than fifty head of beef cattle. Dairy cattle may be loaned in units of less than ten head.

(p) *Preference.* Unless otherwise specifically authorized and justified in writing by the Area Director, preference shall be given to applicants in the following order:

(1) *Beef cattle.* First preference shall be given to applicants who have less than fifty head of cattle of breeding age, and who are equipped to handle up to fifty head. Second preference shall be given to applicants without cattle who have not previously participated in the program, but who are equipped to handle a cattle enterprise. Third preference shall be given to applicants who have fifty head or more cattle of breeding age, but less than one hundred head, but this group shall not receive loans until all applicants having less than fifty head of cattle of breeding age and who are equipped to handle this size unit, have received loans.

(2) *Dairy cattle.* Applicants for cattle to supply milk for home consumption shall receive preference over applicants for cattle to undertake commercial dairy operations.

(q) *Restrictions.* Loans to applicants owning one hundred or more head of beef cattle of breeding age shall not be approved without the consent of the Commissioner. Not more than fifteen head of dairy cattle of breeding age may be loaned to any one individual without the consent of the Commissioner.

PART 93—LOAN GUARANTY, INSURANCE, AND INTEREST SUBSIDY

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AUTHORITY: Title II, sec. 218, 88 Stat. 77, 79.

SOURCE: 40 FR 12492, Mar. 19, 1975, unless otherwise noted.

§ 93.1 Definitions.

Wherever used in the regulations in this Part, the terms defined in this section shall have the meanings stated:

(a) "Secretary" means the Secretary of the Interior.

(b) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(c) "Indian" means any person who is a member of any Indian tribe, band, group, pueblo or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in paragraph (d) of this section.

(d) "Native" means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group.

(e) "Tribe" means any Indian tribe, band, group, pueblo, or community, including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in paragraphs (f) and (g) of this section, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

(f) "Native village" means any tribe, band, clan, group, village, community, or association in Alaska listed in sections 11 and 16 of the Alaska Native Claims Settlement Act (85 Stat. 688), or which meets the requirements of this Act, and which the Secretary determines was, on the 1970 census enumeration date (as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance), composed of twenty-five or more Natives.

(g) "Native group" means any tribe, band, clan, village, community, or village association of Natives in Alaska composed of less than twenty-five Natives, who comprise a majority of the residents of the locality.

(h) "Reservation" means Indian reservations, unterminated California rancherias, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688).

(i) "Economic enterprise" means any Indian-owned, commercial, industrial, agricultural or business activity established or organized for the purpose of profit, provided that eligible Indian ownership constitutes not less than 51 per centum of the enterprise.

(j) "Organization" means the governing body of any Indian tribe, as defined in paragraph (e) of this section, or entity established or recognized by such governing body for the purpose of this Act.

(k) "Other organizations" means any non-Indian individual, firm, corporation, partnership, or association.

(l) "Borrower" means the Indian organization or individual Indian receiving a guaranteed or insured loan.

(m) "Guaranty" means the obligation assumed by the United States to repay a specific percentage of a loan upon default of the borrower pursuant to the regulations in this Part 93.

(n) "Guaranteed loan" means a loan guaranteed by the United States pursuant to the regulations in this Part 93.

(o) "Insured loan" means a loan made pursuant to an agreement approved by the Commissioner with a financial institution, under which an obligation is assumed by the United States to indemnify the lender for a percentage of a loss on loans, pursuant to the regulations in this Part 93.

(p) "Premium" means the charge made to lenders for guaranteeing or insuring loans under provisions for reimbursement of lenders by the United States for a percentage of losses incurred.

(q) "Interest subsidy" means payments which may be made by the United States to lenders making insured or guaranteed loans to reduce the interest rate which borrowers pay the lenders to the rate established pursuant to section 104 of the Indian Financing Act of 1974 (88 Stat. 77).

(r) "Default" means failure of a borrower to make scheduled payments on a loan, failure to obtain the lender's approval for disposal of assets mortgaged as security for a loan, or failure to comply with the covenants, obligations or other written provisions of a loan agreement.

(s) "Mortgages" means mortgages and deeds of trust evidencing an encumbrance of trust or restricted land, mortgages and security agreements executed as evidence of liens against crops and chattels, and mortgages and deeds of trust evidencing a lien on leasehold interests.

(t) "Financing statement" means the document filed or recorded in county or state offices pursuant to the provisions of the Uniform Commercial Code notifying third parties that a lender has a lien on the chattels and/or crops of a borrower.

(u) "Applicant" means an applicant for a guaranteed or insured loan.

(v) "Cooperative association" means an association of individuals organized pursuant to state, Federal or tribal law, for the purpose of owning and operating an economic enterprise for profit, with profits distributed or allocated to patrons who are members of the organization.

(w) "Corporation" means an entity organized pursuant to state, federal or tribal law, with or without stock, for the purpose of owning and operating an economic enterprise.

(x) "Partnership" means two or more persons engaged in the same business, sharing its profits and risks, organized pursuant to state, Federal, or tribal law.

§ 93.2 Purpose.

(a) The purpose of this Part 93 is to prescribe the terms, conditions and provisions under which loans made to eligible tribes, Indian organizations and individual Indians for financing economic enterprises which contribute beneficially to the economy of an Indian reservation or for housing on a reservation may be guaranteed or insured by the United States. Lenders are reimbursed for a percentage of a loss or losses incurred on loans made under the provisions of this Part 93, as evidenced by an approved guaranty certificate or insurance agreement.

(b) It is also the purpose of this Part 93 to prescribe procedures for payment of an interest subsidy to lenders making guaranteed or insured loans to reduce the interest to be paid by the borrowers, for establishing loan guaranty and insurance premiums to be charged, and for collection of the premium. This program will provide Indians with additional sources of financing needed to develop and manage their reservation resources to a higher degree.

§ 93.3 Kinds of loans.

(a) Loans to tribes, eligible Indian organizations, and Indian individuals for financing economic enterprises which contribute to the economy of a reservation or its members or for housing on a reservation to be occupied by the borrower may be guaranteed or insured. Housing loans may be guaranteed or insured only after a determination has been made by the Commissioner that other sources of financing are not available to the appli-

cant on reasonable terms and conditions.

(b) Loans to tribes and organizations for the purchase of land may be guaranteed or insured only for purchasing land within the exterior boundaries of a reservation or land outside the exterior boundaries of a reservation which will be used by the borrower and/or its members for an economic enterprise which will contribute to the economy of a reservation. Loans to individuals may be guaranteed or insured for purchasing trust or restricted land in which the borrower owns an interest or land within the exterior or outside the exterior boundaries of a reservation. In all instances, the land must be used by the borrower in operating an economic enterprise which will contribute to the economy of a reservation. The Commissioner may require an applicant for a guaranteed or insured loan for the purchase of land to provide information showing that financing from other sources is not available on reasonable terms and conditions. Title to land purchased with a guaranteed or insured loan may be taken in trust or restricted status unless the land is located outside the boundaries of a reservation or a tribal consolidation area approved by the Secretary. Title to any land purchased by a tribe or an individual Indian which is outside the boundaries of a reservation or approved consolidation area may be taken in trust if the purchaser was the owner of a trust or restricted interest in the land before the purchase. Otherwise, title shall be taken in the name of the purchaser without any restrictions on alienation, control or use.

(c) Funds included in loans for the purchase of non-recoverable items, as well as furniture, passenger carrying automobiles, trucks or pickups, televisions, radios, and household appliances are not eligible for guaranty or insurance unless required in the direct operation of an economic enterprise. Funds included in loans for payment of personal bills or obligations are not eligible for guaranty or insurance. Funds included in loans for payment of unsecured debts may be guaranteed or insured only if justified, due to the applicant's financial position and clearly to the advantage of the applicant in the operation of an economic enterprise.

(d) No loans will be guaranteed or insured for the financing of a relending program.

§ 93.4 Management and technical assistance.

(a) Concurrent with the issuance of a guaranty certificate for a loan to finance an economic enterprise, the Commissioner will assure under Title V of the Indian Financing Act of 1974 that competent management and technical assistance is available to the borrower consistent with the borrower's knowledge and experience and the nature and complexity of the economic enterprise being financed. Assistance may be provided by available Bureau of Indian Affairs staff, other government agencies including states, a tribe, or other sources which the Commissioner considers competent to provide the needed assistance. Contracting for management and technical assistance may be used only when adequate assistance is not available without additional cost. Contracts for providing borrowers with competent management and technical assistance shall be in accordance with applicable Federal Procurement Regulations, and the Buy Indian Act of April 30, 1908, Chapter 431, section 25 (36 Stat. 861).

(b) When submitting to the Commissioner a request for guaranty or insurance of a loan to finance an economic enterprise, a lender will include, as part of the request, or separately, its evaluation of the applicant's need for management and technical assistance, specific areas of need, and whether the lender will provide such assistance to the applicant. A lender making loans under the provisions of a general insurance agreement may determine each applicant's need for management and technical assistance when financing of an economic enterprise is involved. If a lender determines that an applicant will need management and technical assistance, it will notify the Commissioner in writing indicating the specific areas of need, and whether it will provide such assistance.

§ 93.5 Preservation of historical and archeological data.

Lenders making guaranteed or insured loans to finance activities involving excavations, road construction, and land development or involving the disturbance of land on known or reported historical or archeological sites will take appropriate action to assure compliance with applicable provisions of the Act of June 27, 1960 (74 Stat. 220; 16 U.S.C. 469), as amended by the Act of May 24, 1974 (Pub. L. 93-291, 88 Stat. 174), relating to the preservation of historical and archeological data. Lenders receiving applications for loans which include funds for purposes which may involve compliance with the provisions of the Act of June 27, 1960, as amended, may request assistance and guidance from the Commissioner in assuring compliance with the requirements of the Act.

§ 93.6 Environmental and flood disaster protection.

Applications for loans to purchase or construct buildings or other improvements which require compliance with any provisions of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234, 87 Stat. 975), and provisions of the National Environmental Policy Act of 1969 (Pub. L. 91-190; 42 U.S.C. 4321) and Executive Order 11514 will not be approved until the lender has received assurance of compliance with any applicable provisions of these Acts. Lenders receiving applications which include funds for purposes which may involve compliance with the provisions of one or both of these Acts may request assistance and guidance from the Commissioner in assuring compliance.

§ 93.7 Eligible organizations.

Tribes and Indian organizations having a form of organization satisfactory to the recognized by the federal government as eligible for services from the Bureau of Indian Affairs, and indicating reasonable assurance of repayment of a loan are eligible for guaranted or insured loans. Cooperative associations, corporations and partnerships shall be organized pursuant to state, federal or tribal law. Cooperative associations, corporations, and partnerships applying for a guaranteed or insured loan to purchase, establish or operate an economic enterprise on a reservation must comply with the requirements of applicable rules, resolutions, or ordinances enacted by the governing body of the tribe, if applicable.

[40 FR 12492, Mar. 19, 1975; 40 FR 20952, May 15, 1975]

§ 93.8 Eligible individuals.

Indians who are members of tribes recognized by the federal government as eligible for services from the Bureau of Indian Affairs which are not making loans to its members and who are not members of or eligible for membership in an organization which is making loans to its members are eligible for guaranteed or insured loans. Individuals applying for a guaranteed or insured loan to purchase, establish or operate an economic enterprise on a reservation must comply with the requirements of applicable rules, resolutions or ordinances enacted by the governing body of the tribe, if applicable.

§ 93.9 Eligible lenders.

(a) Those financial institutions subject to examination and supervision by an agency of the United States, a state, or the District of Columbia, having the capacity to evaluate, process, disburse, and service loans, and Indian tribes making loans from their own funds to other tribes or organizations of Indians, are eligible to have loans insured under this Part 93. Loans made by any lender regularly engaged in making loans, having the capacity to accept and process applications and service loans, and which lender is satisfactory to the Commissioner, may be guaranteed. Any national bank or federal savings and loan association, or any bank, trust company, building and loan association, or insurance company authorized to do business in the District of Columbia may make any loan of which at least 20 percent is guaranteed under this Part 93 without regard to the limitations and restrictions of any other federal statute with respect to (1) ratio of amount of loan to the value of the property; (2) maturity of loans, (3) re-

quirement of mortgage or other security, (4) priority of lien, or (5) percentage of assets which may be invested in real estate loans.

(b) Any guaranty certificate issued pursuant to this Part 93 or any loan insured pursuant to an agreement with a lender approved in accordance with this Part 93 shall be conclusive evidence that the loan was eligible for guaranty or insurance.

§ 93.10 Ineligible loans.

The following loans are not eligible for guaranty or insurance under this Part 93:

(a) Loans made by any agency or instrumentality of the federal government.

(b) Loans made by an organization of Indians making loans from funds borrowed from the United States.

(c) Loans where the interest income is not included as taxable income under Chapter 1 of the Internal Revenue Code of 1954 as amended.

(d) Loans with repayment terms exceeding thirty years.

§ 93.11 Guaranteed loans.

Loans, except those excluded in § 93.10, made by any lender meeting the requirements of § 93.9(a), which are satisfactory to the Commissioner may be guaranteed. Applications for guaranty will be considered on a loan by loan basis. No guaranty shall be effective until issuance of a guaranty certificate by the Commissioner and receipt of the guaranty premium from the lender. A guaranty certificate shall be issued only when, in the judgment of the Commissioner, there is a reasonable prospect of repayment of the loan.

§ 93.12 Insured loans.

(a) Eligible lenders, as prescribed in § 93.9, and tribes making loans from their own funds to other tribes or Indian organizations, may make insured loans, except those excluded in § 93.10 pursuant to the provisions of an insurance agreement entered into between the Commissioner and the lender. Insurance agreements may be entered into by the Commissioner and eligible lenders which will authorize the lenders to make insured loans to eligible applicants without the Commissioner's approval of each individual loan. Separate insurance agreements will be issued by the Commissioner for those loans which require the issuance of individual insurance agreements.

(b) Lenders will make loans only when there is a reasonable prospect of repayment. The insurance on any loan made under the provisions of an insurance agreement will not be effective until receipt of the insurance premium by the Commissioner.

§ 93.13 Amount of guaranty.

(a) The percentage of a loan that is guaranteed shall be the minimum necessary to obtain financing for an applicant, but may not exceed 90 percent of the unpaid principal and interest on any guaranteed loan. The liability under the guaranty shall increase or decrease pro rata with any increase or decrease in the unpaid portion of the principal amount of the obligation. No loan to an individual Indian may be guaranteed for an unpaid principal amount in excess of $100,000. No loan to an individual Indian will be guaranteed for a principal amount of less than $2,500 or for a term of less than one year. No loan to a tribe or Indian organization will be guaranteed for a principal amount less than $10,000 or for a term of less than one year. An exception may be made to these limitations on amounts and time, if approved by the Commissioner.

(b) Applications of minors as determined by applicable state and federal law, may not be approved unless the natural parents or legal guardians, with reputations as being responsible individuals, co-sign the promissory note(s) and securing document(s). Not more than one guaranteed loan may be in effect with the same borrower at any time without the prior approval of the Commissioner.

§ 93.14 Amount of insurance.

(a) The insurance provisions will apply to loans made by a particular lender under the terms of an insurance agreement entered into between the Commissioner and the lender. The insurance procedure will be used primarily for loans to finance small economic enterprises and secondarily for

housing. A lender may be reimbursed for a loss on a particular loan in an amount not to exceed 90 percent of the loss on principal and unpaid accrued interest on the loan. However, the total reimbursement to a lender for losses may not exceed 15 percent of the aggregate of insured loans made by it.

(b) Loans for any amount made by tribes from their own funds to other tribes or Indian organizations will not be insured without the prior approval of the Commissioner. No loan to finance an economic enterprise with a principal amount in excess of $50,000 shall be insured without the prior approval of the Commissioner. No loan to an individual Indian may be insured which would cause the total unpaid principal amount to exceed $100,000. Any loan to an individual Indian having a principal amount in excess of $50,000 will require prior approval of the Commissioner. No loan to an individual with a principal amount of less than $2,500 or for a term of less than one year may be insured. No loan to a tribe or Indian organization for a principal amount of less than $10,000 for a term of less than one year may be insured. An exception may be made to these limitations on amounts and time, if approved by the Commissioner.

(c) Applications of minors may not be approved unless the natural parents or legal guardians, with reputations as being responsible individuals, co-sign the promissory note(s) and securing documents. Not more than one insured loan may be in effect with the same borrower at any time without the prior approval of the Commissioner.

§ 93.15 Applications for loans.

(a) Applicants will deal directly with lenders for both guaranteed and insured loans. The form of loan application will be determined by the lender. The application or attachment thereto must include or show the following: (1) Plan of operation for the economic enterprise; (2) purpose(s) and the amount of the loan; (3) security to be given; (4) hazard and liability insurance to be carried; (5) interest rate; (6) repayment schedule; (7) repayment source(s); (8) how title to property purchased with the loan is to be taken; (9) current financial statements of the applicant; (10) description and dollar value of the personal investment to be made by the applicant; (11) charges pursuant to § 93.44; (12) pro forma balance sheets, operating statements and cash flow statements for at least three succeeding years; (13) balance sheets and operating statements for the two preceding years, or applicable period thereof; if already in operation, and (14) the lender's evaluation of the economic feasibility of the enterprise. Copies of organization papers for cooperative associations and corporations, and copies of partnership agreements, must be submitted with applications. Applications for guaranteed loans will also show the percentage of guaranty requested.

(b) Reasonable assurance of repayment will be considered to exist:

(1) In the case of individuals, where past operations and future prospects of the applicant's operations demonstrate ability to repay the loan from production, earnings, or other assets. Full consideration will be given to the applicant's managerial ability and experience.

(2) In the case of tribes and Indian organizations, where past operations or future plans of operations indicate that the economic enterprise for which financing is requested is economically sound. Full consideration will be given to arrangements for efficient management of the economic enterprise for which financing is requested. The commissioner shall require that a written plan of operation for economic enterprises be prepared, adopted by the borrower, and approved by the lender and the commissioner.

§ 93.16 Loan otherwise available.

If the information in an application for a guaranteed, or insured loan which requires the Commissioner's approval, indicates that it may be possible for the applicant to obtain the loan without guaranty or insurance, the Commissioner may require the applicant to furnish letters from two customary lenders in the area, if available, who are making loans for similar

purposes, showing whether or not they will make a loan to the applicant on reasonable terms and conditions without guaranty or insurance. If a lender will make a loan to an applicant without guaranty or insurance, a loan will not be guaranteed or insured for the applicant. A lender making loans which do not require Commissioner approval under the provisions of an insurance agreement shall determine that financing is not otherwise available on reasonable terms and conditions without the benefit of insurance. There must be a reasonable prospect for repayment of loans which are guaranteed or insured.

§ 93.17 Refinancing.

(a) Applications for loans to refinance indebtedness will be approved only if justified and required due to the applicant's financial position and if clearly to the advantage of the applicant. Applications to refinance loans to an economic enterprise will be accompanied by financial and cash flow statements required in § 93.15(a)(1) through (14).

(b) Applications for refinancing loans not guaranteed or insured under this Part 93 will not be approved for guaranty or insurance if, in the opinion of the Commissioner, the submittal of the application is motivated primarily to obtain guaranty or insurance of a loan which otherwise would be made.

§ 93.18 Furnishing additional information.

The Commissioner may require either the lender or the borrower, or both, to furnish additional information or justification for a loan prior to issuance of a guaranty certificate or insurance agreement where Commissioner approval of an individual insured loan is required.

§ 93.19 Approval of guaranteed loans.

(a) Upon a lender's approval of an application for a guaranteed loan, the lender will forward the application in duplicate to the Commissioner with a "Request for Guaranty". The Commissioner will approve the application by issuance of a "Guaranty Certificate" which will show the percentage amount of the loan guaranteed, the premium to be paid to the Commissioner and the interest subsidy to be paid on the loan by the United States.

(b) If the application is not approved, the original will be returned to the lender with an explanation, and a copy furnished the loan applicant.

§ 93.20 Approval of insured loans.

After a lender approves a loan eligible for insurance in accordance with an approved insurance agreement, the lender will proceed as authorized by the agreement. Applications for insured loans which require approval by the Commissioner as prescribed in § 93.14 will be forwarded in duplicate to the Commissioner with a "Request for Insurance" signed by the lender. The Commissioner will approve the application by issuance of an "Insurance Agreement". If the application is not approved, the original will be returned to the lender with an explanation.

§ 93.21 Modification of loan agreements.

(a) Guaranteed and insured loans may be modified with the approval of the parties to the original loan agreement. Modification of guaranteed loans and those insured loans which required Commissioner approval, requires the Commissioner's approval only if the modification involves, (1) change of the repayment schedules, (2) changes in the prime security, (3) change of interest rate, (4) change in the use of loan funds, (5) increase in the principal amount of a loan, except as provided in § 93.22, (6) change of the plan of operation, (7) amendment or changes in the organization papers of the borrower, (8) changes in partnership agreements, and (9) change in the location of an enterprise.

(b) Lenders making insured loans which under the provisions of an approved insurance agreement do not require Commissioner approval shall use prudence in approving requests for modifications of loan agreements and follow the lender's customary procedures and practices which are used in connection with noninsured loans made by it. Modifications are to be in compliance with the provisions of §§ 93.13, 93.14, and 93.24. Lenders making insured loans under the provi-

sions of such an insurance agreement shall notify the Commissioner not later than 20 days after approval of a modification of such insured loan. Modifications of the organization papers of corporations or cooperative associations and partnership agreements and plans of operation which originally required Commissioner approval, require approval by the Commissioner upon modification.

§ 93.22 Protective advances.

When provided for in a loan agreement, and subject to the limitations on the amounts and terms of loans as provided in §§ 93.13, 93.14, and 93.24, lenders may advance, for certain purposes, up to 10 percent of the amount for which a guaranteed or insured loan originally was approved. If the borrower is unable to provide the funds or refuses to do so, an advance may be made for purposes necessary and proper for the preservation, maintenance or repair of the property purchased with or given to secure the loan; for accrued taxes, special assessments, ground and water rents, and hazard and liability insurance premiums; and for any other purpose necessary for the protection of the interest of the lender or borrower. The additional advance will be charged against the borrower. Repayment of the protective advance shall be automatically guaranteed or insured at the same percentage rate as applied to the original amount of the loan upon the Commissioner's receiving notice from the lender that an additional amount has been advanced with a statement as to the necessity and purpose(s) of the advance. Such documentation shall be furnished along with the premium for the additional amount pursuant to § 93.43(b). The amount of any additional advance shall be scheduled for repayment proportionately over the remaining installments of the unpaid principal balance of the loan. The interest rate charged on protective advances as provided for in this section will be determined in accordance with the provisions of § 93.41.

§ 93.23 Increase in principal of loans.

(a) Borrowers requiring additional funds may apply for an increase in a guaranteed or insured loan with the same lender. Applications to increase the amount of guaranteed and insured loans which originally were approved by the Commissioner, require his approval upon increases in amounts. Lenders making insured loans which under the provisions of an approved insurance agreement which did not require Commissioner approval, may approve applications for an increase in the principal of such loans subject to compliance with the limitations contained in §§ 93.14 and 93.24. Such insured lenders shall immediately notify the Commissioner upon approval of an increase in the principal of a loan and remit the premium on the increase pursuant to § 93.43(b).

(b) The application for an increase in the amount of a loan must show the reasons why an increase is needed, the amount and purposes for which the funds will be used, and the repayment schedule. If the financing involves an economic enterprise, the application must be accompanied by the information required in § 93.15(a) (2) through (5), (7), (8), (10), (12), and (13) of this Part 93.

(c) The interest rate to be charged on principal increases will be determined in accordance with the provisions of § 93.41.

§ 93.24 Maturity.

The period of maturity of guaranteed and insured loans will be determined according to the circumstances, but may not extend beyond 30 years from the date of the first advance. All maturities will be consistent with sound business practices and customs of lenders in the area.

§ 93.25 Amortization.

All loans shall be scheduled for repayment at the earliest practicable date consistent with the purpose(s) of the loans and the repayment capacity of the borrowers. Lenders will require amortization in accordance with customary practices in the area for loans for the same purposes. Loan payments may be scheduled for repayment either monthly, quarterly, semi-annually or annually. Balloon installments shall be avoided.

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§ 93.26 Prepayments.

Borrowers whose loans are guaranteed or insured under this Part 93 shall have the right to prepay all or any part of the indebtedness at any time without penalty unless otherwise provided for in the loan agreement. Lenders and borrowers may agree that prepayments applied to the latest loan installments may be reapplied to current installment(s) to cure or prevent any subsequent default. The Commissioner shall be notified promptly by the lender when payments are made in advance of the due dates.

§ 93.27 Amount of security.

Lenders will require borrowers to give security, if available, up to an amount adequate to protect the loan, without consideration of the guaranty or insurance.

§ 93.28 Filing and recording.

(a) All securing documents and financing statements, when applicable, except assignments of income from trust land and mortgages on documented vessels, shall be filed or recorded in the appropriate county or other public office in accordance with state law. Mortgages on documented vessels will be filed at the Customs House designated as the home port of the vessel as shown on the marine document. Security interests in personal property will be perfected in accordance with the provisions of Article 9 of the Uniform Commercial Code in states in which the code has been adopted.

(b) Lenders are responsible for filing a copy of assignments of income from trust land with the office of the Bureau of Indian Affairs having jurisdiction over the trust land involved and for filing or recording other securing instruments pursuant to the laws of the state in which the property is located or in the proper Customs House. Lenders must also see that: (1) Effective liens are maintained at all times; (2) taxes on the property included in the securing instruments are paid promptly to prevent such taxes from becoming a lien taking priority over a mortgage; and (3) hazard and liability insurance is obtained and maintained in an amount sufficient to protect the security against the risks or hazards to which it may be subjected, to the extent customary in the locality. Failure of a lender to discharge any of these responsibilities will diminish the amount of the guaranty or insurance to the extent of any loss caused by the lender's failure, unless there are extenuating circumstances which in the judgment of the Commissioner do not justify a reduction of the amount guaranteed or insured.

§ 93.29 Property purchased with loan funds.

(a) Lenders making guaranteed or insured loans which include funds to finance construction of buildings, or installation of water, sewage, electrical or gas lines shall assure that the site is appropriate and adequate; cost estimates are prepared and are in line with current costs; plans are prepared by qualified individuals or a firm; provisions are made to assure compliance with applicable building codes, zoning and labor laws; and inspections are made by qualified inspectors during construction and upon completion. Upon receiving applications involving funds to finance construction, lenders may request assistance and guidance from the Commissioner on such matters. The Commissioner may arrange for an inspection of any property purchased with guaranteed or insured loans at any reasonable time. Property which may be inspected includes proposed building sites, during and on completion of construction of buildings; electrical, sewage, water or gas lines; and livestock and machinery purchased with loan funds.

(b) Lenders will require that any property purchased with a guaranteed or insured loan, except land purchased by a tribe, title to which is taken in trust or restricted status, be mortgaged to the lender as security for the loan, unless the loan is otherwise adequately secured.

§ 93.30 Land.

(a) Tribes, organizations and Indian individuals may execute mortgages or deeds of trust on nontrust or unrestricted land as security without the approval of any federal official.

(b) Tribal land, title to which is held in a trust or restricted status, may not be mortgaged unless specifically authorized by Congress.

(c) Individually-owned land held in trust or restricted status may be mortgaged as security for a loan in accordance with 25 CFR 121.34 and the Act of March 29, 1956 (70 Stat. 62; 25 U.S.C. 483a). Mortgages of individually held trust or restricted land will include only the acreage of the land owned by a borrower, which the Commissioner considers is adequate to protect the loan in case of default. Mortgages on individually held trust or restricted land shall be subject to foreclosure or sale pursuant to the terms of the mortgage. For the purposes of any foreclosure or sales proceedings, the owner shall be regarded as vested with an unrestricted fee simple title to the land. The United States shall not be a necessary party to the proceedings pursuant to the Act of March 29, 1956 (70 Stat. 62; 25 U.S.C. 483a). Any conveyance of the land pursuant to such proceedings shall divest the United States of title to the land. Trust or restricted land given as security for a loan shall not be sold or title otherwise transferred without giving the Commissioner and the tribe of the reservation on which the land is located, or is adjacent to, written notice, at least 45 days in advance of the date of sale or proposed transfer of title.

(d) Tribes, corporations, cooperative associations, partnerships, and Indian individuals leasing trust or restricted land may, when provided in the lease and approved by the lessor and the Commissioner, mortgage their leasehold interest in the leased premises for the purpose of borrowing capital for the development and improvement of the leased premises.

§ 93.31 Chattels.

Tribes, organizations and Indian individuals may execute mortgages on nontrust and unrestricted chattels as security without the approval of any federal official. If a lender requires, the Commissioner may approve mortgages of trust or restricted chattels given to secure guaranteed or insured loans. A tribe must adhere to the provisions of its constitution, bylaws, charter, or other organizational documents in mortgaging chattels. Mortgaged chattels shall be subject to foreclosure or sale pursuant to the terms of the mortgage or security agreement in accordance with applicable laws.

§ 93.32 Crop mortgages.

Crops grown on leased trust or restricted land may be mortgaged as security for a loan with the approval of the lessor and the Commissioner. Individuals owning trust or restricted land may mortgage crops grown on such land as security for a loan with approval of the Commissioner. Crops grown on trust or restricted land after severance from the land and crops grown on nontrust and unrestricted land may be mortgaged as security without the approval of any federal official.

§ 93.33 Assignments of income.

(a) A tribe or organization may execute assignments of trust income from specific sources as security for loans, pursuant to authorization in its constitution, bylaws, charter, or other organization papers. Tribes may not execute general assignments of trust income as security for loans. Assignments of trust income require approval by the Commissioner before becoming effective.

(b) Assignments of income from the trust or restricted land of an Indian individual may be executed as security for loans with the approval of the Commissioner. However, restricted land of heirs or devisees of members of the Five Civilized Tribes of Oklahoma is subject to the jurisdiction of Oklahoma state courts under the Act of August 4, 1947 (61 Stat. 73).

§ 93.34 Restrictions.

Unless the security for a loan requires approval of a federal official, no restrictions shall be placed by any official upon the security that may be given for a loan. Lenders will use caution in making certain that the security taken is unencumbered. Lenders will follow the same prudent procedures as if the borrower were a non-Indian or a non-Indian organization.

§ 93.35 Release of security.

The prime security for a loan will not be released unless the property is sold and the net proceeds applied to the loan. When approved by the Commissioner, the prime security may be released when the property is sold and the proceeds are used to purchase property of similar nature and use and of at least equal value and lien priority as the property sold and when the lender, borrower and Commissioner agree that the sale and such use of the proceeds are necessary for the success of an economic enterprise. Lenders may release property which is planned to be sold in the regular course of a business when the proceeds are to be used for purposes which the lender determines are necessary and proper in connection with the type of economic enterprise involved. Releases of security involving trust income or trust or restricted land will require the prior approval of the Commissioner.

§ 93.36 Default on guaranteed loans.

Within 45 calendar days after the occurrence of a default, the holder of a guaranty certificate shall notify the Commissioner by certified or registered mail showing the name of borrower, guaranty certificate number, amount of unpaid principal owing, amount of principal delinquent, amount of interest accrued and unpaid to date of notice, amount of interest delinquent at time of notice, and any other failure of the borrower to comply with other provisions of the loan agreement. Within 60 calendar days after default on a loan, the holder of a guaranty certificate shall proceed as prescribed in either paragraph (a), (b), or (c) of this section, unless an extension of time is requested and approved by the Commissioner. The request for an extension of time shall explain the reason why a delay is necessary and the estimated date on which action will be initiated. Failure of a certificate holder to proceed with action within 60 calendar days or the date to which an extension is approved by the Commissioner shall cause the guaranty certificate to cease being in force or effect. If the Commissioner is not notified of the failure of a borrower to make a scheduled payment or of other default within the required 45 calendar days, the Commissioner will proceed on the assumption that the scheduled payment was made and the loan agreement is current and in good standing. The Commissioner will then decrease the amount of the guaranty pro rata by the amount of the due installment and the lender will have no further claim for guaranty as it applies to the installment, except for the interest subsidy which may be due.

(a) The guaranty certificate holder may make written request that payment be made pursuant to the provisions of the guaranty certificate or guaranty agreement. If the Commissioner finds that a loss has been suffered, he shall pay to such holder the pro rata portion of the amount guaranteed including unpaid interest.

(b) The borrower and the guaranty certificate holder may agree upon an extension of the repayment terms or other forbearance for the benefit of the borrower. Certificate holders may extend all reasonable forbearance if a borrower becomes unable to meet the terms of a loan. However, such forbearance will not be extended if it will increase the likelihood of a loss on a loan. Agreements between a certificate holder and a borrower shall be in writing and will require approval by the Commissioner.

(c) The certificate holder may advise the Commissioner in writing that suit or foreclosure is considered necessary and proceed to liquidate the security to the extent feasible. On completion of foreclosure, if the Commissioner determines that a loss has been suffered, he will reimburse the lender the pro rata portion of the amount of unpaid principal and interest guaranteed. A guaranty certificate holder will submit a claim for reimbursement for losses on a form furnished by the Commissioner and will furnish any additional information needed to establish the amount of the claim. On reimbursement of a lender or guaranty certificate holder for the pro rata amount of the loss guaranteed as provided in the guaranty certificate, the lender will subrogate its rights and interest in the loan to the United States and assign the loan, obligations and security for the loan to the United States. The

lender shall have no further claim against the United States or the borrower. The Commissioner may establish the date on which accrual of interest or charges shall cease. This date may not be later than the date of judgment and decree of foreclosure or sale. The Commissioner will take any action necessary to protect the interest of the United States. Any collections or proceeds from the liquidation of security shall be for the account of the United States up to the amount paid on the guaranty and other costs incurred in protecting, managing, and disposing of the collateral. Collections will be deposited in the loan guaranty and insurance fund established pursuant to this Part 93.

§ 93.37 Default on insured loans.

Within 45 calendar days after the occurrence of a default of a loan made under the provisions of an insurance agreement, the lender shall notify the Commissioner by certified or registered mail giving the name of the borrower, insurance agreement number, amount of unpaid principal, amount of delinquent principal, accrued interest unpaid to date of notice, amount of delinquent interest and description of default. Within 60 calendar days after default on an insured loan, the lender shall proceed as prescribed in paragraphs (a) or (b) of this section unless it has requested, and the Commissioner has approved, an extension of time. A request for an extension of time will explain the necessity for an extension and the estimated date on which action will be initiated. Failure of the lender to proceed within 60 calendar days or the extended time approved by the Commissioner, will be grounds for the Commissioner to terminate the loan insurance on the loan involved.

(a) The lender and borrower may agree upon an extension of the repayment terms of a loan or other forbearance for the benefit of the borrower. However, such forbearance will not be extended if it will increase the likelihood of a loss on a loan. Insured loans made under the provisions of a general insurance agreement authorizing a lender to make loans under the terms prescribed in the agreement will not require Commissioner approval of changes in agreements made by the lender and borrower. Provided, such changes are in compliance with the requirements of § 93.21 and the applicable sections referred to therein. The lender shall immediately notify the Commissioner within 21 calendar days of changes made in the agreement. Insured loans made which originally required the issuance of a separate insurance agreement by the Commissioner will require Commissioner approval of changes in the provisions of such loans.

(b) If an insured lender determines that proceeding under paragraph (a) of this section is contrary to its customary lending practices or is not in the interest of a borrower, it will be required to exhaust all reasonable efforts to collect the loan and to liquidate the security to the fullest extent feasible before submitting a claim for reimbursement of a loss.

(c) If a lender proceeds under the provisions of paragraph (b) of this section and suffers a loss, it may submit a claim for reimbursement for unpaid principal and interest on a form furnished by the Commissioner and will furnish any additional information needed to establish the amount of the claim. Claims will be submitted to the Commissioner within 45 calendar days after completion of the procedures prescribed in this section. All claims shall be accompanied by evidence showing that all reasonable efforts to collect the loan have been exhausted and that security given for the loan has been liquidated to the extent feasible. If the Commissioner agrees that a loss has occurred, he will reimburse the lender pursuant to the terms of the approved insurance agreement under which the loan was insured. Upon reimbursement by the Commissioner to the lender in whole or in part for the loss insured, the note and security for the loan or judgment evidencing the debt shall be assigned to the United States. The lender shall have no further claim against the United States or the borrower. The Commissioner will then take such further collection action as may be warranted. The Commissioner may establish a date upon which accrual of interest or charges shall cease.

§ 93.38 Subrogated and assigned rights.

The Commissioner will take such action as he deems appropriate to realize the maximum recovery upon the rights to which the United States is subrogated and the security assigned to the United States. Any amount collected will be deposited in the loan guaranty and insurance fund.

§ 93.39 Cancellation.

The Secretary may cancel the uncollectible portion of any obligation assigned to the United States or rights to which the United States is subrogated. However, the cancellation of all or part of a loan shall be effective only after the following steps have been taken:

(a) The Secretary submits to the Congress a report on adjustments made during the preceding fiscal year with recommendations for cancellations for the current fiscal year.

(b) Congress by concurrent resolution approves the cancellation within sixty legislative days after receipt of the report and recommendations; or

(c) Congress does not take action approving or disapproving the cancellation within sixty legislative days after receipt of the report. (47 Stat. 564; (25 U.S.C. 386a))

§ 93.40 Charges upon liquidation.

Lenders may charge the following against the gross amounts collected from the sale of security in determining the amounts to be claimed under a guaranty certificate or insurance agreement:

(a) Reasonable and necessary expenses for preservation of the security.

(b) Court and attorney costs in a foreclosure or proper judicial proceeding involving the security.

(c) Other reasonable expenses necessary for collecting the debt or for repossession, protection, and liquidation of the security.

(d) Other expenses or fees approved in advance by the Commissioner.

(e) Accrued unpaid interest to the date of judgment and decree of foreclosure or sale, or the date established by the Commissioner that accrued interest shall cease pursuant to §§ 93.36 and 93.37.

§ 93.41 Interest.

Interest rates charged by lenders on guaranteed and insured loans, exclusive of loan service charges, if any, shall not exceed such percent per annum on the principal obligation outstanding as the Commissioner determines to be reasonable and legal at the time a loan is guaranteed or insured, taking into account the range of rates prevailing in the private market for similar loans and the risks assumed by the United States. Each loan shall show the rate of interest to be charged. Interest shall be payable at least annually. Once a loan is closed, the interest rate may not be increased even though the lender increases the rate on new loans. Lenders may not charge interest on loan funds used for payment of loan service charges.

§ 93.42 Interest subsidy.

(a) The Commissioner will pay an interest subsidy to lenders on loans which are guaranteed or insured under this Part 93 at rates which are necessary to reduce the interest rate payable by the borrowers to a rate determined in accordance with Title I, Section 104, of the Indian Financing Act of 1974 (Pub. L. 93-262, 83 Stat. 77). The rate of interest subsidy will be established by the Commissioner at the time of issuance of a guaranty certificate or insurance agreement on loans requiring approval by the Commissioner. The rate will be in effect during the term of the loan. Interest subsidies paid to lenders by the United States on behalf of borrowers shall continue to be paid over the remaining life of the original term of a loan even if the lender elects to discontinue the guaranty or insurance or otherwise causes the termination of the guaranty or insurance by failure to make guaranty or insurance premium payments as required in § 93.43. Interest subsidy payments by the United States shall be discontinued on such loans when one of the following occurs:

(1) The loan is paid in full prior to the expiration of the original term.

(2) The loan is refinanced by a new loan.

(3) The repayment schedule on the principal balance owing is extended

beyond the original term, unless an exception is approved by the Commissioner. The interest subsidy shall only be discontinued as to the balance which has been extended beyond the original term of the loan.

(4) The lender on a defaulted loan is reimbursed for a guaranteed or insured loss. The date of the check shall be the date of reimbursement.

(b) The lender shall notify the Commissioner that he has made or modified an insured loan under the provisions of a general insurance agreement within 20 days of such action and provide the Commissioner with the following information:

(1) The name and address of the borrower.

(2) Tribal affiliation of the borrower.

(3) Amount of the loan and purpose(s).

(4) The repayment schedule.

(5) The interest rate charged the borrower.

(6) The date(s) funds were advanced.

(c) After receiving notice from the lender, the Commissioner will establish the interest subsidy rate and notify the lender of the rate established. The interest subsidy rate established by the Commissioner will remain in effect for the term of the loan for which the interest subsidy rate is established. The Commissioner may establish procedures requiring lenders to provide reports which will expedite the prompt payment of interest subsidies. Interest subsidies will be paid on the unpaid principal balance owed by a borrower either annually, semiannually, quarterly or monthly, depending on the time interest is scheduled to be paid and as near the due date as feasible, but not before. Lenders shall notify the Commissioner promptly when borrowers pay interest or principal in advance of the due date(s) provided in the loan agreement.

§ 93.43 Premium charges.

(a) A premium will be charged lenders on the unpaid principal balance of guaranteed and insured loans at a rate established by the Commissioner. Premium charges will not be charged to, collected from, or otherwise passed on to borrowers. The Commissioner will establish the premium rate to be charged on guaranteed and insured loans made during a specified period of time and will notify lenders of the rate which will be charged during the period established. By advance written notice to lenders making guaranteed or insured loans, the Commissioner may change or continue the rate established for the preceding period. The premium rate established for loans made during a given period of time will remain in effect for the duration of the loan. The Commissioner may require a change in the premium rate on refinanced guaranteed and insured loans to the rate in effect at the time of refinancing.

(b) Premiums for guaranty and insurance of loans shall be paid semiannually. The first premium shall be remitted to the Commissioner by the lender at the time a loan is closed and will be on the principal amount of the loan. The premium shall be for the 6 months or portion of the 6 months in which the loan is closed. Thereafter, premiums will be remitted by the lender within 30 days after December 31 and June 30 on the principal balance outstanding at the end of each semiannual period. The guaranty or insurance of a loan will not be effective until the Commissioner receives the premium. Premium collections will be deposited in the loan guaranty and insurance fund pursuant to § 93.50. The guaranty or insurance of a loan shall cease to be effective if the premium payment is not received by the Commissioner within 30 days following the end of a semiannual period unless a longer period, not to exceed 60 days, is authorized by the Commissioner.

§ 93.44 Other charges.

Funds may be included in loans for payment of reasonable and customary costs for legal or architectural services, appraisals, surveys, compliance inspections, title searches, lien searches, recordation costs, hazard and liability insurance premiums, taxes and such other charges as the Commissioner may authorize at the time a loan is made. Loan service charges, if any, may be charged if authorized in the loan agreement. Funds included in a

loan for payment of loan service charges may not bear interest pursuant to § 93.41. Borrowers shall not be required to pay points, finders fees, loan origination fees, bonuses, commissions or similar charges.

§ 93.45 Late charge.

Lenders may assess borrowers a late charge on any loan installment, principal only, received more than 30 days after its due date if the loan agreement at the time of approval contains an authorization to this effect. The rate shall be specified in the loan agreement. The amount of late charges assessed may not be guaranteed or insured. Interest may not be charged on late charges.

§ 93.46 Loan servicing.

The guaranty or insurance of a loan by the Commissioner and the issuance of an insurance agreement will be based on the requirement that adequate loan servicing will be performed by the lender. Loan servicing will be without cost to the borrower, unless the Commissioner authorizes a charge at the time the loan is made pursuant to § 93.44. Authorizations for such charges shall be in writing and included in the loan agreement. Lenders are expected to follow accepted standards employed by prudent lenders in the area in servicing similar type loans. In servicing loans, lenders will make every effort to prevent and minimize potential losses. Lenders will use prudence in disbursing loan funds to borrowers to assure, to the extent feasible, that loan funds are used only for the purposes for which the loan is made. Unless approved by the Commissioner, any amounts disbursed for purposes other than those provided in the loan agreement shall be excluded in the computing the amount for which the lender may be reimbursed in the event of a loss on a loan.

§ 93.47 Restrictions on lenders.

Loan agreements shall not provide that the lender shall have the right to declare the indebtedness due, or to pursue one or more legal remedies, if the lender "shall feel insecure". This restriction shall not prevent a lender from taking action against a borrower due to any act or omission on the part of the borrower which, by the terms of a note, mortgage, or other loan document, would allow the lender to declare a loan in default, nor to take action to minimize the loss on a loan.

§ 93.48 Title to property purchased with loans.

Title to personal property purchased with a guaranteed or insured loan shall be taken in the name of the borrower without a restriction against alienation. Title to land purchased with a guaranteed or insured loan may be taken pursuant to § 93.3. Transactions involving taking title to land purchases in trust or restricted status require approval of the Commissioner.

§ 93.49 Fraud or misrepresentation.

(a) Lenders shall use prudence in checking and verifying information contained in loan applications as well as supporting papers and documents in order to assure their accuracy and the validity of signatures.

(b) There shall be no liability on the part of the United States to reimburse an insured lender for that portion of an insured loss on a loan caused by (1) the lender's negligence in checking and verifying signatures, information in the loan application, supporting papers and documents; (2) the lender's furnishing false information to induce the issuance of an insurance agreement by the Commissioner; (3) the lender's furnishing false information in a loan docket on a loan made under the provisions of a general insurance agreement issued by the Commissioner; or (4) the lender's willful or negligent action which resulted in a fraud, forgery or misrepresentation.

(c) There shall be no liability on the part of the United States to reimburse a lender on a guaranteed loan for that amount of the guaranteed loss caused by (1) the lender's negligence in checking and verifying signatures, information in the loan application, supporting papers and documents; (2) the lender's furnishing false information to induce the issuance of a guaranty certificate by the Commissioner; or (3) the lender's willful or negligent action which permitted a fraud, forgery or misrepresentation. A reduction will

not be made in the amount of reimbursement on a guaranteed loss to a purchaser, assignee, or transferee who acquired the loan before maturity for value and did not directly or by agent participate in or have prior knowledge of a fraud, forgery or misrepresentation.

§ 93.50 Loan guaranty and insurance fund.

(a) The loan guaranty and insurance fund shall be utilized for all loan guaranty and insurance operations pursuant to the regulations in this Part 93. All receipts from operations including premium charges shall be deposited in this fund. All disbursements incident to administering guaranteed and insured loans shall be made from this fund. All cash, claims, notes, mortgages, contracts, and property acquired by the Secretary under this Part 93 shall constitute assets of the fund. All liabilities and obligations of such assets shall be liabilities and obligations of the fund.

(b) The Commissioner will design an accounting system that will reflect at all times the financial condition of the fund and the results from its operation.

(c) Interest subsidies paid by the Commissioner pursuant to § 93.42 shall be paid from the loan guaranty and insurance fund and charged against an "interest subsidy account" as an expense of the fund.

§ 93.51 Sale or assignment of guaranteed loans.

Any guaranteed loan, including the security and guaranty certificate, may be sold, assigned, or transferred by the lender to any financial institution that is subject to examination and supervision by an agency of the United States, a state or the District of Columbia. The institution acquiring the loan shall notify the Commissioner in writing within 30 days after acquisition. The notice will give the name of the borrower, the certificate number, the amount of principal and interest unpaid on the loan, and the security acquired. Failure of the acquirer to notify the Commissioner within 30 days of acquisition will void the guaranty unless the Commissioner authorizes an exception because of extenuating circumstances.

§ 93.52 Records.

Lenders will maintain adequate records on guaranteed and insured loans made and will submit reports to keep the Commissioner informed regarding guaranteed and insured loans made. The Commissioner may prescribe the number of reports to be submitted annually, the dates, and the forms to be used for reporting. The Commissioner may have the records of lenders inspected at any reasonable time during regular business days and hours.

§ 93.53 Suspension of lenders.

Whenever the Commissioner finds that any lender or holder of a guaranty certificate or insured loan fails to maintain adequate accounting records, to demonstrate proper ability to adequately service loans guaranteed or insured, or to exercise proper credit judgment, or has willfully or negligently engaged in practices detrimental to the interests of a borrower or of the United States, he may refuse, either temporarily or permanently, to guarantee or insure any additional loans made by such lender or certificate holder. He may also bar such lender or certificate holder from acquiring additional loans guaranteed under this Part 93. However, the Commissioner shall not refuse to pay a valid guaranty or insurance claim on loans previously made in good faith.

§ 93.54 Probate.

(a) The estates of deceased borrowers who die possessed of trust property or funds and who gave as security for a guaranteed or insured loan an assignment of income from trust property, a mortgage or deed of trust on trust or restricted land, or a lien on trust chattels or crops growing on trust land will be probated in accordance with the applicable regulations in Subpart D of 43 CFR Part 4 and in Parts 16 and 17 of 25 CFR. The Superintendent or other Bureau official having jurisdiction over the trust property and trust funds of a decedent shall promptly notify the lender on receipt of information confirming the demise of a borrower. The notice may

be given by furnishing the lender with a copy of the Superintendent's report to the Administrative Law Judge or by separate letter.

(b) A lender receiving information from a Superintendent or otherwise learning of the demise of a borrower shall notify the Administrative Law Judge of the lender's claim against the decedent's trust estate. The lender's notice to the Administrative Law Judge shall include:

(1) The name of the borrower.

(2) The balance owing on the loan.

(3) The trust property or income given as security for the loan.

(4) A copy of securing documents.

(5) A copy of the guaranty certificate or insurance agreement.

(c) Within 15 days after receiving information that a borrower has died, the lender shall notify the Commissioner of this fact by furnishing a copy of the information provided to the Administrative Law Judge or by separate letter furnishing:

(1) The name of the borrower.

(2) The guaranty certificate number or insurance agreement number.

(3) The balance owing on loan.

(4) Any anticipated action which will be taken to protect the interests of the lender and the United States.

(d) The notice shall be sent by registered or certified mail.

SUBCHAPTER J—FISCAL AND FINANCIAL AFFAIRS

PART 101—ANNUITY AND OTHER PER CAPITA PAYMENTS

Sec.
101.1 Persons to share payments.
101.2 Enrolling non-full-blood children.
101.3 Payments by check.
101.4 Election of shareholders.
101.5 Future payments.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 22 FR 10549, Dec. 24, 1957, unless otherwise noted.

§ 101.1 Persons to share payments.

In making all annuity and other per capita payments, the funds shall be equally divided among the Indians entitled thereto share and share alike. The roll for such payments should be prepared on Form 5-322,[1] in strict alphabetical order by families of husband, wife, and unmarried dependent minor children. Unless otherwise instructed, (a) Indians of both sexes may be considered adults at the age of 18 years; (b) deceased enrollees may be carried on the rolls for one payment after death; (c) where final rolls have been prepared constituting the legal membership of the tribe, only Indians whose names appear thereon are entitled to share in future payments, after-born children being excluded and the shares of deceased enrollees paid to the heirs if determined or if not determined credited to the estate pending determination; and (d) the shares of competent Indians will be paid to them directly and the shares of incompetents and minors deposited for expenditure under the individual Indian money regulations.

CROSS REFERENCES: For regulations pertaining to the determination of heirs and approval of wills, see Part 15 and §§ 11.30-11.32C of this chapter. For individual Indian money regulations, see Part 104 of this chapter.

§ 101.2 Enrolling non-full-blood children.

Where an Indian woman was married to a white man prior to June 7, 1897, and was at the time of her marriage a recognized member of the tribe even though she left it after marriage and lived away from the reservation, the children of such a marriage should be enrolled—and, also in the case of an Indian woman married to a white man subsequent to the above date but who still maintains her affiliation with the tribe and she and her children are recognized members thereof; however, where an Indian woman by marriage with a white man after June 7, 1897, has, in effect, withdrawn from the tribe and is no longer identified with it, her children should not be enrolled. In case of doubt all the facts should be submitted to the Bureau of Indian Affairs, Washington, D.C., for a decision.

§ 101.3 Payments by check.

All payments should be made by check. In making payments to competent Indians, each check should be drawn to the order of the enrollee and given or sent directly to him. Powers of attorney and orders given by an Indian to another person for his share in a payment will not be recognized. Superintendents will note in the "Remarks" column on the roll the date of birth of each new enrollee and the date of death of deceased annuitants.

§ 101.4 Election of shareholders.

An Indian holding equal rights in two or more tribes can share in payments to only one of them and will be required to elect with which tribe he wishes to be enrolled and to relinquish in writing his claims to payments to the other. In the case of a minor the election will be made by the parent or guardian.

§ 101.5 Future payments.

Indians who have received or applied for their pro rata shares of an interest-bearing tribal fund under the act of March 2, 1907 (34 Stat. 1221; 25 U.S.C. 119, 121), as amended by the act of May 18, 1916 (39 Stat. 128), will not be permitted to participate in future payments made from the accumulated interest.

[1] Forms may be obtained from the Commissioner of Indian Affairs, Washington, D.C.

PART 102—REGULATIONS FOR PRO RATA SHARES OF TRIBAL FUNDS

Sec.

102.1 Fee simple patentees.
102.2 Applicants who have received neither fee simple patents nor certificates of competency.
102.3 Applicants who are mentally or physically incapable of managing their affairs.
102.4 Interests in pro rata shares not vested rights unless application approved.
102.5 Basis of distribution; pro rata shares.
102.6 Disposition of pro rata share in event of applicant's death.
102.7 Pro rata shares of minors.

AUTHORITY: Sec. 2, 34 Stat. 1221, as amended; 25 U.S.C. 121.

SOURCE: 22 FR 10549, Dec. 24, 1957, unless otherwise noted.

CROSS REFERENCE: For regulations pertaining to the determination of heirs and approval of wills, see Part 15 and §§11.30–11.32 of this chapter.

§ 102.1 Fee simple patentees.

When the applicant has been granted a patent in fee or certificate of competency, that fact will be accepted as prima facie evidence of his competency, but in forwarding applications of this class the agent will give the date on which the patent was issued, report whether in his judgment the patentee has made proper use of his privileges and would make good use of his share of the tribal funds if paid to him, and make a specific recommendation for approval or disapproval of the application.

§ 102.2 Applicants who have received neither fee simple patents nor certificates of competency.

In the case of an applicant who has received neither a fee simple patent nor a certificate of competency, the application must be accompanied by evidence which will establish the fact that he is capable of managing his own affairs. In forwarding applications of this class the superintendent will report fully, as follows:

(a) Is the applicant living on this allotment? If so, is he making reasonable efforts to cultivate his land and to support himself and family? If he is not living on his allotment, what is his occupation?

(b) Is any part of his allotment leased? If so, to what extent does he depend upon the rent therefrom to support himself and family?

(c) Has the applicant been given the privilege of leasing his own lands; and if so, with what result?

(d) Has he an interest in any inherited land? If he has sold or leased any inherited land, how has he managed the proceeds?

(e) Is the applicant of good moral character?

(f) Is he addicted to the use of intoxicants? And if so, does this habit, in the judgment of the agent, unfit him to make proper use of his share of the tribal funds?

(g) What is his physical condition?

(h) Is the applicant in debt? If so, to what extent and for what purpose was the debt incurred?

(i) Has the applicant the necessary business qualifications to enable him to manage his own affairs?

(j) Give such other information concerning the applicant as will aid the office in determining whether or not to approve his application.

(k) Make a specific recommendation for the approval or disapproval of the application.

§ 102.3 Applicants who are mentally or physically incapable of managing their affairs.

Applications of this class must be accompanied by evidence that will establish the advisability of withdrawing the share. If the application is approved, the funds will be deposited to the credit of the Indian and handled as individual Indian money.

In forwarding applications the agent will report fully as follows:

(a) Sex and exact date of birth.

(b) Identify the applicant by allotment and last annuity-roll numbers.

(c) What is the actual physical condition of the applicant. If suffering from disease, submit certificate of physician if necessary to establish disability.

(d) What is the actual mental condition of the applicant? Answer fully.

(e) What are the material resources of the applicant?

(f) What advantages will accrue to applicant by withdrawal of his or her share at this time?

(g) Has it been explained to the applicant and does he understand that if the application is approved the funds will be deposited to his credit as individual Indian money to be expended under the supervision of the superintendent?

(h) Make a specific recommendation for the approval or disapproval of the application.

CROSS REFERENCE: For individual Indians money regulations, see Part 104 of this chapter. For deposits of Indian funds in banks, see Part 105 of this chapter.

§ 102.4 Interest in pro rata shares not vested rights unless application approved.

On November 6, 1908, the Secretary of the Interior decided, in effect, that the interest of an Indian in a pro rata share of a tribal fund does not vest in the Indian an inheritable property until after his application has been approved by the Secretary and an order signed by him segregating it from the tribal fund. Applications for shares of funds under this act may be made at any time, but in view of the Secretary's decision such applications should be forwarded to the Bureau by the superintendent as soon as they are completed and filed with him. Applications from those who are blind, decrepit, etc., must be made special and forwarded to the Bureau of Indian Affairs, Washington, D.C., as soon as possible.

§ 102.5 Basis of distribution; pro rata shares.

In estimating the pro rata share of an individual, the last annuity payroll prior to July 1, or January 1 of each year will be taken as a basis of distribution. Where no payment has been made within 1 year, the last census, if taken within the year, will be the basis. If no census has been taken or payment made within a year, the last available record—either census or annuity roll will be used.

§ 102.6 Disposition of pro rata share in event of applicant's death.

In the event of the death of an applicant prior to the approval of his application by the Secretary of the Interior, the share to which he would have been entitled, if living, will revert to the tribe. In case of the death of an applicant after approval of his application and the signing by the Secretary of the Interior of an order for the segregation of his share, but before payment is made, his share will descend to his legal heirs and should be deposited to the credit of the estate pending formal determination thereof.

CROSS REFERENCE: For regulations pertaining to the determinations of heirs and approval of wills, see Part 15 and §§ 11.30-11.32C of this chapter.

§ 102.7 Pro rata shares of minors.

The shares of minors will not be withdrawn except when necessary for their own benefit. The application should be signed by the parent or guardian and transmitted to the Bureau by the superintendent with his recommendation as in other cases and a full explanation of the circumstances which justify the withdrawal. Such shares will be deposited to the credit of the minors subject to expenditure under the individual Indian money regulations. The term "minor," as used in this section, shall be interpreted in conformity with the State law.

CROSS REFERENCE: For individual Indian money regulations, see Part 104 of this chapter.

PART 104—INDIVIDUAL INDIAN MONEY ACCOUNTS

Sec.

104.1 Definitions.
104.2 Osage Agency.
104.3 Individual accounts.
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104.6 Voluntary deposits.
104.7 Payments by other Federal agencies.
104.8 Purchase orders.
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Sec.
104.12 Assets of Members of the Agua Caliente Band of Mission Indians.
104.13 Appeals.

AUTHORITY: R.S. 441, as amended, R.S. 463, R.S. 465; 5 U.S.C. 301; 25 U.S.C. 2, 9; 43 U.S.C. 1457.

SOURCE: 23 FR 7942, Oct. 15, 1958, unless otherwise noted.

§ 104.1 Definitions.

As used in this part:

(a) The term "individual Indian money accounts" means those accounts under the control of the Secretary of the Interior or his authorized representative belonging to individuals.

(b) The term "minor" means an individual who has not reached his majority as defined by the laws of the State of his domicile.

§ 104.2 Osage Agency.

The provisions of this part do not apply to funds the deposit or expenditure of which is subject to the provisions of Part 108 of this subchapter.

§ 104.3 Individual accounts.

Except as otherwise provided in this part, adults shall have the right to withdraw funds from their accounts. Upon their application, or an application made in their behalf by the Secretary or his authorized representative, their funds shall be disbursed to them. All such disbursements will be made at such convenient times and places as the Secretary or his authorized representatives may designate.

§ 104.4 Minors.

(a) Funds, other than a per capita share of judgment funds which exceeds $100 in total amount at the time actual payment is made, including the investment income accruing thereto, of a minor may be disbursed in such amounts deemed necessary in the best interest of the minor for the minor's support, health, education, or welfare to parents, legal guardians, fiduciaries, or to persons having the control and custody of the minor under plans approved by the Secretary, or the minor directly, upon such conditions as the Secretary may prescribe. The Secretary will require modification of an approved plan whenever deemed in the best interest of the minor.

(b) A per capita share of judgment funds which exceeds $100 in total amount at the time actual payment is made, including the investment income accruing thereto, of a minor shall not be disbursed until the minor reaches 18 years of age. At that time, unless the minor is under legal disability, the minor shall be entitled to withdraw his judgment funds and accrued investment income as provided in § 104.3. If the minor is under legal disability upon reaching his majority, his judgment funds and accrued investment income thereon shall be handled pursuant to § 104.5.

[41 FR 48736, Nov. 5, 1976]

§ 104.5 Adults under legal disability.

The funds of an adult who is non compos mentis or under other legal disability may be disbursed for his benefit for such purposes deemed to be for his best interest and welfare, or the funds may be disbursed to a legal guardian or curator under such conditions as the Secretary or his authorized representative may prescribe.

§ 104.6 Voluntary deposits.

As a general rule, voluntary deposits shall not be accepted. Indians who require banking service shall be encouraged to utilize commercial facilities. If in any case it is determined that an exception to this prohibition should be made to avoid a substantial hardship, the facts in the case shall be considered by the Secretary or his authorized representative and an exception will be allowed or denied.

§ 104.7 Payments by other Federal agencies.

Moneys received from the Veterans Administration or other Government agency pursuant to the act of February 25, 1933 (47 Stat. 907; 25 U.S.C. 14), may be accepted and administered for the benefit of adult Indians under legal disability or minors for whom no legal guardian or fiduciary has been appointed.

§ 104.8 Purchase orders.

Purchase orders may be issued only in emergencies upon the request of any account holder. The Secretary or his authorized representative may act in emergencies on behalf of an account holder who is unable to make a request because of illness or incapacity or, to meet expenses of last illness or funeral.

§ 104.9 Restrictions.

Funds of individuals may be applied by the Secretary or his authorized representative against delinquent claims of indebtedness to the United States or any of its agencies or to the tribe of which the individual is a member, unless such payments are prohibited by acts of Congress, and against money judgments rendered by courts of Indian offenses or under any tribal law and order code. Funds derived from the sale of capital assets which by agreement approved prior to such sale by the Secretary or his authorized representative are to be expended for specific purposes, and funds obligated under contractual arrangements approved in advance by the Secretary or his authorized representative or subject to deductions specifically authorized or directed by acts of Congress, shall be disbursed only in accordance with the agreements (including any subsequently approved modifications thereof) or acts of Congress. The funds of an adult whom the Secretary or his authorized representative finds to be in need of assistance in managing his affairs, even though such adult is not non compos mentis or under other legal disability, may be disbursed to the adult, within his best interest, under approved plans. Such finding and the basis for such finding shall be recorded and filed with the records of the account.

CROSS REFERENCE: For rules governing the payment of judgments from individual Indian money accounts, see § 11.26 of this chapter.

§ 104.10 Funds of deceased Indians other than the Five Civilized Tribes.

Funds of a deceased Indian other than those of the Five Civilized Tribes may be disbursed (a) for the payment of obligations previously authorized, including authorized expenses of last illness; (b) for authorized funeral expenses; (c) for support of dependent members of the family of decedent in such amounts deemed necessary to avoid hardship and consistent with the value of the estate and the interest of probable heirs; (d) for necessary expenses to conserve the estate pending the completion of probate proceedings; and (e) for probate fees and claims allowed pursuant to Part 15 of this chapter.

§ 104.11 Funds of deceased Indians of the Five Civilized Tribes.

Funds of a deceased Indian of the Five Civilized Tribes may be disbursed to pay ad valorem and personal property taxes, Federal and State estate and income taxes, obligations approved by the Secretary of his authorized representative prior to death of decedent, expenses of last sickness and burial and claims found to be just and reasonable which are not barred by the statute of limitations, costs of determining heirs to restricted property by the State courts, and claims allowed pursuant to Part 16 of this chapter.

§ 104.12 Assets of Members of the Agua Caliente Band of Mission Indians.

(a) The provisions of this section apply to money or other property, except real property, held by the United States in trust for such Indians, which may be used, advanced, expended, exchanged, deposited, disposed of, invested, and reinvested by the Director, Palm Springs Office, in accordance with the Act of October 17, 1968 (Public Law 90-597). The management or disposition of real property is covered in other parts of this chapter.

(b) Investments made by the Director, Palm Springs Office, under the Act of October 17, 1968, supra, shall be of such a nature as will afford reasonable protection of the assets of the individual Indian involved. The Director is authorized to enter into contracts for the management of the assets (except real property) of individual Indians. The consent of the individual Indian concerned must be obtained prior to the taking of actions affecting

his assets, unless the Director determines, under the provisions of section (e) of the Act, that consent is not required.

(c) The Director may, consistent with normal business practices, establish appropriate fees for reports he requires from guardians, conservators, or other fiduciaries appointed under State law for members of the Band.

[33 FR 16636, Nov. 15, 1968]

§ 104.13 Appeals.

Appeal from an action taken by a Superintendent or other officer in charge of an Indian agency or reservation may be taken within 30 days of notification of the action to the Area Director in charge of an area office of the Bureau of Indian Affairs. An appeal from an action of an Area Director may be taken within 30 days to the Commissioner of Indian Affairs. An appeal from an action of the Commissioner may be taken within 30 days to the Secretary of the Interior.

[23 FR 7942, Oct. 15, 1958. Redesignated at 33 FR 16636, Nov. 15, 1968]

PART 105—DEPOSIT OF INDIAN FUNDS IN BANKS

Sec.
105.1 Authority for deposit.
105.2 Banks defined.
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105.5 Security.
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105.9 Deposits.
105.10 Payment of interest.
105.11 Reports; statement of disbursing account (Form 5-308).
105.12 Statement of deposits (Form 5-302).
105.13 Report of condition.
105.14 Checks.
105.15 Service charges prohibited.
105.16 Statements required.
105.17 Disqualification.

AUTHORITY: 5 U.S.C. 301. Interpret or apply sec. 1, 36 Stat. 855, as amended; 25 U.S.C. 372.

SOURCE: 22 FR 10551, Dec. 24, 1957, unless otherwise noted.

§ 105.1 Authority for deposit.

Indian moneys, individual or tribal, may be deposited in banks under authority of the acts of June 25, 1910, as amended (48 Stat. 648; 25 U.S.C. 372); May 25, 1918 (40 Stat. 591; 25 U.S.C. 162); and February 27, 1925 (43 Stat. 1009).

§ 105.2 Banks defined.

For the purpose of the regulations in this part, the word "banks" shall include State and national banks, and savings banks and trust companies doing a banking business.

§ 105.3 Application.

Any bank desiring to qualify for deposits of Indian funds shall transmit to the Commissioner of Indian Affairs (or to the proper superintendent if a call for bids has been issued) an application accompanied by a report in the form prescribed by the Comptroller of the Currency (or the State Banking Department) showing fully the condition of the bank on a day not more than one month prior to the date of such application. In making application, banks must state the maximum amount desired and the minimum that will be accepted, the rate of interest that will be paid, and the type of security that will be furnished. The following statement must be incorporated in the letter of application: This bank agrees that if designated a depositary, it will comply with the regulations of the Department of the Interior governing the deposit of Indian funds in banks and with such instructions as may from time to time be issued by the Commissioner of Indian Affairs.

§ 105.4 Qualification.

(a) In the selection of a bank to serve as a depositary, the following points will be given consideration:

(1) Location with respect to the nearest agency.

(2) Financial condition.

(3) Rate of interest and security offered.

(b) No bank will be considered for designation unless it has been in successful operation for 1 year and has accumulated a surplus equal to 10 percent of the capital stock. This will not apply to banks offering United States bonds or notes as security.

§ 105.5 Security.

Under acts of Congress, deposits of Indian funds are required to be secured by surety bonds (corporate or individual) or by bonds or notes of the United States. The following securities are classed as United States obligations: Panama Canal loan bonds, Treasury bonds, and Treasury notes. Bonds on which surety companies or individuals appear as sureties must be executed in triplicate on forms [1] prescribed for the purpose, and each copy must be accompanied by a transcript of a resolution by the board of directors of the bank, authorizing the proper officers to execute the instrument. The bonds must be executed for a stipulated term of not less than 180 days. Such bonds, however, are continuing in nature and will remain in force beyond the stipulated period until canceled in accordance with the provisions contained therein. Wherever a bank receives notice from any source that its surety bond is to be canceled, it shall immediately arrange to submit substitute security which must reach the Bureau of Indian Affairs and be approved 10 days before the effective date of the cancellation notice. Any bank failing to furnish other security in accordance with the foregoing shall relinquish its deposit with accrued interest not later than the date of the tenth day preceding the effective date of the cancellation notice.

§ 105.6 Corporate sureties.

Only those companies holding certificates of authority from the Secretary of the Treasury to write bonds on which the United States is obligee are acceptable as sureties.

§ 105.7 Individual sureties.

Each person appearing as surety on a personal surety bond must qualify in an amount equal to twice the penalty of the bond. At least four individuals must act as sureties on each bond. Officers and directors of a bank furnishing a personal surety bond will not be accepted as sureties, nor will any person who is a bonded officer of the United States or a married woman.

§ 105.8 Collateral security.

Banks pledging United States bonds or notes as security shall execute a deposit agreement on forms prescribed by the Commissioner of Indian Affairs and shall furnish a resolution of authority by the board of directors, authorizing the sale, assignment, or transfer of the collateral. The bonds or notes shall be either deposited with the Commissioner of Indian Affairs who will place them with the Treasurer of the United States for safekeeping, or sent direct to the Division of Securities, Office of the United States Treasurer, Treasury Department, to be held subject to the order of the Commissioner of Indian Affairs. In either case, receipt for the collateral will issue from the Bureau of Indian Affairs. Registered bonds must be assigned in blank before shipment, and a resolution by board of directors, authorizing the assignment, must be filed with the Division of Loans and Currency, Treasury Department, on Treasury Department Form PD 1009 or Form PD 1010. All correspondence relating to the deposit, withdrawal, substitution, or exchange of securities shall be addressed to the Commissioner of Indian Affairs.

§ 105.9 Deposits.

Each bank that has been designated as a depositary and has filed proper bond will be given a deposit in an amount equal to 95 percent of the penalty of the bond, unless it has been selected to carry an active checking account in which case the deposit will be limited to 90 percent of the security. Upon receipt of the deposit from the disbursing agent, the bank shall immediately credit it to an account which must be opened under his name and offical title. The deposit shall be subject to withdrawal in accordance with the terms of the depositary's surety bond or its deposit agreement. Time certificates of deposit, running for definite periods during which deposits are not subject to check, are not acceptable. The terms of any such instruments issued contrary to the regula-

[1] Forms may be obtained from the Commissioner of Indian Affairs, Washington, D.C.

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tion in this part will be considered void and of no effect.

§ 105.10 Payment of interest.

Except as to depositaries for funds of the Osage and Five Civilized Tribes Agencies, each bank carrying a deposit shall credit interest thereon at the agreed rate to the account of the disbursing agent at the close of June 30, and December 31 of each year. Banks carrying deposits in the names of the disbursing agents of the Five Civilized Tribes and Osage Agencies shall credit interest to their accounts at the close of April 30 and October 31 of each year. Within 5 days after the close of the interest period, the amount credited to the account of a disbursing agent shall be remitted to him by draft unless he has previously arranged to withdraw it by check. Any bank delinquent in the payment of interest shall be liable for interest on the overdue amount. In the event that a deposit or any part thereof is withdrawn during an interest period by reason of the cancellation of a bond, interest which has accrued on the amount so withdrawn shall immediately be credited and promptly remitted to the disbursing agent by draft unless included in his check or covered by separate check.

§ 105.11 Reports; statement of disbursing account (Form 5-308).

Each depositary for Indian funds shall furnish monthly statements of receipts and paid checks on Form 5-308 (and Form 5-308a if extra space is needed). Paid checks will be listed thereon in numerical order showing for each check its date, number, and amount. These statements will be prepared in triplicate for each disbursing officer having funds to his official credit. A duplicate copy will be forwarded to the disbursing officer in charge of the unit for reconciliation within 10 days after the close of the month. The disbursing officer will make a prompt comparison with his records, and after adjusting any errors found with the bank, the latter will immediately forward the original statement and paid checks directly to the General Accounting Office, Audit Division, Washington, D.C. The triplicate copy of the statement will be retained in the bank's files. In no case will the depositary send the paid checks to the disbursing officer nor should the statement and checks be sent to or routed through the Bureau. Statements will be required of both time and checking depositaries so long as any balance of Indian moneys remains on deposit and must be furnished for fractional parts of a month whenever a change of disbursing officers takes place or a new bond (disbursing agent's) becomes effective before the end of a month. Depositaries should apply to disbursing officers for a supply of the necessary forms.

§ 105.12 Statement of deposits (Form 5-302).

Each bank having a deposit not actively checked against shall submit semiannually, within 5 days after the close of June 30, and December 31, of each year, to the officer in whose name the deposit is carried, a statement in duplicate on Form 5-302. After comparing the statement with his records, the officer will forward the original to the Bureau of Indian Affairs if it is found correct. Banks carrying active checking accounts shall submit the statements within 5 days after the close of each month. Depositaries should apply to the Bureau for Forms 5-302.

§ 105.13 Report of condition.

When called for by the Commissioner of Indian Affairs, a report of financial condition shall be submitted by each depositary. A copy of the report made to the Comptroller of the Currency (or the State Banking Department) will suffice if not more than 1 month has elapsed since such report. If a longer period has elapsed, current figures shall be given, but in the same form. No printed forms are provided by the Department for the submission of the report.

§ 105.14 Checks.

Each bank designated as a depositary shall furnish the disbursing agent, without charge, an adequate supply of blank checks. Checks to be supplied by banks carrying active checking accounts must be printed in

accordance with instructions from disbursing agents.

§ 105.15 Service charges prohibited.

No bank in which Indian funds are deposited shall charge or receive any exchange or other fees or compensation on account of the cashing or collection of any checks or drafts or the performance of any other service for disbursing agents.

§ 105.16 Statements required.

Depositaries shall render such statements and give such information as properly accredited inspecting and administrative officers may request.

§ 105.17 Disqualification.

Any bank which shall fail to comply with the regulations in this part shall be liable to be disqualified.

PART 107—CREATION OF TRUSTS FOR RESTRICTED PROPERTY OF INDIANS, FIVE CIVILIZED TRIBES, OKLAHOMA

Sec.
107.1 Application for trust.
107.2 Obligations of trust company.
107.3 Secretarial approval discretionary.
107.4 Contents trust agreement.
107.5 Eligibility of appraisers.
107.6 Aiding Indians in formulating trust agreements.
107.7 Trust duration.
107.8 Trustee's security.
107.9 Trustee's compen ation.
107.10 Necessary forms.
107.11 Limit restricted property in trust.
107.12 Amendments.

AUTHORITY: Sec. 7, 47 Stat. 778.

SOURCE: 22 FR 10552, Dec. 24, 1957, unless otherwise noted.

§ 107.1 Application for trust.

Indians desiring to establish trust estates under the provisions of the said act must make written application therefor to the Secretary of the Interior through the superintendent or other official in charge of the Five Civilized Tribes Agency, Muskogee, Oklahoma. The application shall designate the trustee, the beneficiary or beneficiaries and the manner in which it is desired the corpus of the estate shall be distbributed upon the termination of the trust. A form of application will, upon request, be furnished by the said superintendent and should be filled out and executed in the presence of the field clerk or, in the office of the superintendent and duly attested by the field clerk or some other Government employee. The information required by the form of application and such other information as may be requested concerning the Indian and his affairs shall be carefully considered by the superintendent who will affix his recommendation to the application and forward it to the Secretary of the Interior with his report, which report shall contain full advice with respect to the education and business qualifications of the applicant, his ability to read, write and understand the English language, his reputation for industry and thrift and what experience, if any, he has had in a business way.

§ 107.2 Obligations of trust company.

The form of proposed trust agreement shall be executed by the trust company or banking institution selected as trustee, and shall be signed by and submitted with the application of the Indian, together with a statement in writing by said trust company or banking institution similar in form to that prescribed by the Comptroller of the Currency (or by the State banking department), showing fully the conditions of said trust company or banking institutions on a day not more than 1 month prior to the date of the application for the creation of the trust. The agreement must also be accompanied by a written certificate duly executed by the trustee to the effect that it has not paid or promised to pay any person other than an officer or employee on its regular payroll any fee, charge, commission or remuneration for any service or influence in securing or attempting to secure for it the trusteeship in that or in other trusts to which the regulations in this part apply.

§ 107.3 Secretarial approval discretionary.

No such trust agreement will be favorably considered unless in the judgment of the Secretary of the Interior the trustee therein named is deemed

by him to be on a sound financial basis and otherwise sufficiently qualified to justify approval of such trust.

§ 107.4 Contents trust agreement.

In addition to the subject matter of the trust, its object and beneficiaries, duties of trustee, etc., the form of trust agreement shall contain provisions to the following general effect:

(a) That such of the current income from the corpus of the estate as may be payable to the Indians of the Five Civilized Tribes of one-half or more Indian blood shall be remitted by the trustee to the Secretary of the Interior or such other official as he may designate for appropriate disposition.

(b) That the trusts declared and each of them shall be irrevocable except with the approval of the Secretary of the Interior, but, subject to his approval, the beneficiaries named in any approved trust may be redesignated by the maker without in any manner otherwise impairing or altering any of the provisions thereof, particularly the duration of the trust or the compensation to be paid to the trustee.

(c) That neither the corpus of the trust estate nor the income derived therefrom is, during the restriction period provided by law, subject to alienation or incumbrance, or to the satisfaction of any debt or other liability of any beneficiary of such trust during the said restricted period.

(d) That if the trust be annulled, canceled or set aside by order of any court or otherwise, the principal of the trust with all accrued and unpaid interest shall be returned to the Secretary of the Interior as restricted individual property.

(e) That the trustee shall render an annual accounting to the Secretary of the Interior and to the beneficiary or beneficiaries to whom the income from any such trust for the preceding year or any part thereof was due and payable, such annual accounting to be submitted within 30 days following the ending of each annual period of the trust, and the trustee shall render accounting to the Secretary of the Interior at any other time on written request by the Secretary of the Interior, within 30 days from such request.

(f) That except as to United States Government bonds and other securities fully guaranteed by the Federal Government in which such funds in the hands of the trustee may be invested without limitations, the following limitations are prescribed on the right of the trustee to invest or reinvest any part of the corpus or income from the trust: (1) Not more than 30 percent of the estate may be invested in securities exclusive of all other limitations contained in this part, which appear on the current list of legal investments for savings banks prepared by the superintendent of banks of the State of New York, except that this authorization shall not include the purchase of public utility securities or railroad securities which do not represent obligations of operating companies, or the purchase of stocks: *Provided, however,* That in the purchase of such securities not more than 20 percent may be invested in general obligations issued by States or by any political subdivisions thereof, and not more than 10 percent may be invested in public utilities and in railroad securities, or in either of them; (2) not more than 15 percent of the trust estate may be invested in Federal land bank bonds issued under the provisions of the act of July 17, 1916 (39 Stat. 360) as amended; (3) not more than 40 percent of the trust estate may be invested in total loans secured on first deeds of trust or first mortgages on improved city or farm real estate situated in the States designated in the trust agreements, but no such loans shall exceed 50 percent of the value of the real estate and improvements appraised not more than 30 days prior to such investments by one or more appraisers selected with the approval of the Secretary of the Interior; (4) no part of the trust fund shall be invested in the purchase of real estate or stocks for the trust except to protect the trust estate in foreclosure or other proceedings; (5) no part of the trust estate shall be invested in any kind of foreign securities, loans, or other properties, private or public.

§ 107.5 Eligibility of appraisers.

Hereafter no person who is interested directly or indirectly, whether through intimate personal, financial or business connections, in any trust company or banking institution designated as trustee under an approved trust agreement involving restricted Indian property, or who is an officer, director, or employee of such trust company or banking institution, shall act as an appraiser of real estate in connection with the making of loans from the trust estate to be secured by first deeds of trust or first mortgages. Nor shall any person having an interest in obtaining such a loan, either personally or as an officer, director or employee of any company, association or partnership seeking such a loan, act as an appraiser. An investigation into the qualifications of all persons selected as appraisers will be made for the purpose of determining that the persons selected are both competent and disinterested.

§ 107.6 Aiding Indians in formulating trust agreements.

In the formulation of the trust agreement and the provisions thereof the superintendent for the Five Civilized Tribes Agency and the other employees under his supervision will upon request assist the Indian to the fullest possible extent to the end that he may understand fully the meaning and the intent of the agreement and make the most satisfactory provision for the formation and consummation of the trust agreement.

§ 107.7 Trust duration.

Under the terms of the statute no trust shall be established to continue for a period of more than 21 years after the death of the last surviving beneficiary named in the trust agreement.

§ 107.8 Trustee's security.

To secure the faithful performance of the duties imposed by the trust agreement the trustee shall, as required by section 7 of the act (47 Stat. 778), deposit securities of the United States or furnish an acceptable corporate surety bond in an amount equal to the value of the trust as fixed and determined by the Secretary of the Interior. Appraisers will be appointed by the Secretary for the purpose of fixing the value of the trust and of revising such value from time to time as the judgment of the Secretary may dictate. Additional or substitute security may be required at any time when deemed necessary for the protection of the trust estate and the interest of the Indians. Trustees pledging United States bonds or notes as security shall execute on forms[1] prescribed by the Secretary an appropriate resolution and power of attorney authorizing the sale, assignment or transfer of the collateral. Only those corporate sureties who hold certificates of authority from the Secretary of the Treasury to write bonds on which the United States is obligee are acceptable as sureties. The cost to the trustee, if any, of furnishing the required bond, will be regarded as a necessary part of the cost of administering the trust and as such deductible from the gross income accruing therefrom.

§ 107.9 Trustee's compensation.

As compensation for administering the trust the trustee will be permitted to receive annually not to exceed 5 percent of the gross annual income from such trust estate, and as further compensation will also be permitted to receive not to exceed an amount equal to 1 percent of the corpus of the trust estate, to be paid out of the income first accruing therefrom, and not to exceed an amount equal to 2 percent of the corpus of the estate at the time of final distribution based upon the last valuation made by the Secretary of the Interior prior to such distribution. By final distribution is meant any distribution to a beneficiary of any part of the corpus of the trust estate at any time under the terms of the trust. All fees are to be based on the size of the trust and the nature of the duties to be performed thereunder. The foregoing percentage of fees are maximum and alternative, that is, within such maximum limitations any one or more of said fees may or may

[1] Forms may be obtained from the superintendent of the Five Civilized Tribes Agency, Muskogee, Oklahoma.

not be allowed within the discretion of the Secretary of the Interior.

§ 107.10 Necessary forms.

In addition to the form of application by the Indians under the act of January 27, 1933 (47 Stat. 777), there are skeleton forms of trust agreement and bond which forms are subject to such changes as may be necessary to meet the requirements of each particular case.

§ 107.11 Limit restricted property in trust.

Not more than three million dollars aggregate value of restricted Indian property shall be placed in trust pursuant to the regulations in this part with any one trustee, trust company or other banking institution authorized by law to act as a fiduciary.

§ 107.12 Amendments.

The regulations in this part may be changed, amended, added to, and any part thereof eliminated at any time by the Secretary of the Interior.

PART 108—DEPOSIT AND EXPENDITURE OF INDIVIDUAL FUNDS OF MEMBERS OF THE OSAGE TRIBE OF INDIANS WHO DO NOT HAVE CERTIFICATES OF COMPETENCY

Sec.

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108.35 Appeals.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 22 FR 10554, Dec. 24, 1957, unless otherwise noted.

§ 108.1 Definitions.

When used in the regulations in this part the following words or terms shall have the meaning shown below:

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(c) "Superintendent" means the superintendent of the Osage Agency.

(d) "Quarterly payment" means the payment of not to exceed $1,000 which is made each fiscal quarter to or on behalf of an adult Indian, from the following sources:

(1) The pro rata distribution of tribal mineral income and other tribal revenues.

(2) The interest on segregated trust funds.

(3) Surplus funds in addition to the income from the foregoing sources in the amount necessary to aggregate $1,000 when the income from those sources is less than $1,000 and the Indian has a balance of accumulated surplus funds in excess of $10,000.

(e) "Surplus funds" means all those moneys and securities readily convertible into cash, except allowance funds and segregated trust funds, which are held to the credit of an Indian at the

Osage Agency and which may be disbursed, expended or invested only upon authorization by the Secretary. The term includes:

(1) That portion of the quarterly distribution of tribal income and interest on segregated trust funds, in excess of $1,000, belonging to an adult Indian.

(2) The proceeds, including appreciation, of the sale or conversion of restricted real or personal property (other than partition sales).

(3) Payments made by insurance companies or others for loss or damage to restricted real or personal property.

(4) All moneys and securities, other than segregated trust funds, to the credit of an Indian who is less than 21 years of age (except the income from restricted lands payable as provided by § 108.3).

(5) Funds and securities placed to the credit of an Indian upon the distribution of an Osage estate.

(f) "Allowance funds" means that income payable to or on behalf of a living adult Indian, the expenditure and disbursement of which is not subject to supervision unless authorized pursuant to the procedure contained in § 108.5. The term includes:

(1) The quarterly payment in an amount not to exceed $1,000.

(2) The rentals and income from restricted lands owned by the Indian.

(3) The rentals and income from restricted lands owned by the minor children of the Indian, as provided in § 108.3.

(4) Income from investments.

(5) Interest on deposits to the credit of the Indian.

(g) "Segregated trust funds" means those moneys held in the United States Treasury at interest to the credit of an Indian which represent pro rata shares of the segregation of tribal trust funds and the proceeds of the partition of restricted lands.

§ 108.2 Payment of taxes of adult Indians.

The superintendent may cause to be paid out of any money heretofore accrued or hereafter accruing to the credit of any adult Indian all taxes of every kind and character for which such Indian is or may be liable before paying to or for such person any funds as required by law. All checks in payment of taxes shall be made payable to the proper collector. For the purpose of establishing a fund with which to meet the payment of such taxes when due, the Superintendent may cause the funds of an adult Indian to be hypothecated in the following manner:

(a) For the payment of ad valorem taxes, one-fourth of the estimated amount ad valorem taxes from each quarterly payment unless this procedure would cause the obligation of more than 25 percent of such quarterly payments, in which event the necessary additional funds shall be retained from other allowance funds payable to such person under the law. If there be no other allowance funds available, or if the funds from these sources are insufficient, one-fourth of the estimated amount of such ad valorem taxes may be obligated from each quarterly payment. If an Indian who is liable for ad valorem taxes has no allowance funds, or such funds are insufficient for the payment thereof, surplus funds may be used for such payment.

(b) (1) For the payment of income taxes, one-half of the estimated amount of income taxes from each semi-annual payment of interest on deposits, but if such interest payments are insufficient to meet this obligation, additional funds shall be retained from interest on investments, rentals, or other allowance funds.

(2) Whenever funds are withheld for the purpose of establishing a fund to meet the payment of taxes, the Indian shall be notified of the action taken.

§ 108.3 Payment of taxes of Indians under 21 years of age.

All taxes assessed against the restricted lands of Indians less than 21 years of age shall be paid by the superintendent direct to the collector from the rents and income derived from such lands, and the balance, if any, of such rents and income shall be paid to the living parents or parent. If the parents are separated, the balance shall be paid to the parent having custody of the Indian under 21 years of age. All other taxes for which an Indian under 21 years of age may be

liable shall be paid from his surplus funds.

§ 108.4 Disbursement of allowance funds.

Except as provided in § 108.5, all allowance funds shall be disbursed to the Indian owner unless the Indian owner directs otherwise in writing. At the request of the Indian owner, such funds may be retained by the superintendent as voluntary deposits subject to withdrawal or other disposition upon demand or direction of the Indian owner. The superintendent may recognize a power of attorney executed by the Indian and may disburse the allowance funds of the Indian in conformity therewith so long as the power of attorney remains in force and effect.

§ 108.5 Procedure for hearings to assume supervision of expenditure of allowance funds.

(a) Whenever the superintendent has reason to believe that an adult Indian is wasting or squandering his allowance funds the superintendent may cause an investigation and written report of the facts to be made. If the report indicates that the Indian is wasting or squandering his allowance funds the following notice shall be served upon the Indian, in person or by registered mail, and a copy thereof shall likewise be served upon his guardian if the Indian is under guardianship:

Section 1 of the act of February 27, 1925 (43 Stat. 1008) provides in part as follows:

"All payments to adults not having certificates of competency, including amounts paid for each minor, shall, in case the Secretary of the Interior finds that such adults are wasting or squandering said income, be subject to the supervision of the Superintendent of the Osage Agency: . . ."

Enclosed is a copy of a report which has been made to me concerning your handling and management of the income paid to you through the Osage Agency. This report indicates that you have been wasting and squandering your payments.

You are hereby notified that a hearing will be held in the Osage Indian Agency, Pawhuska, Oklahoma, at --- m., on the ----- day of ----------, 19---, before the Superintendent, for the purpose of taking testimony and evidence to be submitted to the Commissioner of Indian Affairs for his consideration in determining whether your payments shall be subject to the supervision of the Superintendent.

You are requested to be present at the hearing at the time and place designated above. You may introduce at the hearing such testimony and evidence as you deem appropriate to show that you are not wasting or squandering your payments and that your payments should continue to be made to you without supervision for your unrestricted use.

You are entitled to employ an attorney to assist you in this matter. Upon your request the employees of the Osage Agency will furnish you with any information you desire concerning your accounts at the Osage Agency or any of your transactions handled through the Osage Agency.

Date.

Superintendent.

(b) A hearing shall be held pursuant to the notice, the date of which shall be not less than 30 days after the date of the notice. For good cause shown to exist the superintendent may continue the hearing to a later date.

(c) A record of the proceedings, consisting of the superintendent's preliminary report, the notice and proof of service, all testimony and evidence introduced at the hearing, and all briefs and letters filed by the Indian or his attorney shall be submitted to the Commissioner, together with a recommendation from the superintendent.

(d) Upon a finding by the Commissioner that the Indian is wasting or squandering his income, his allowance funds shall thereafter be subject to the supervision of the superintendent. Notice of the decision of the Commissioner shall be furnished all interested parties.

§ 108.6 Allowance for minors.

The superintendent may disburse from the surplus funds of an Indian under 21 years of age not to exceed $300 quarterly for the support and maintenance of the minor. Disbursement may be made to the parent, guardian, or other person, school or institution having actual custody of the minor, or, when the minor is 18 years of age or over, disbursement may be made direct to the minor.

§ 108.7 Disbursement or expenditure of surplus funds.

Except as provided in the regulations in this part, no disbursement or

expenditure of surplus funds of Indians shall be made without the consent of the Indian owner and until authorization has been obtained from the Commissioner. Application by an Indian or his legal guardian, or if he is a minor, by his parent or legal guardian, for the expenditure of surplus funds shall be presented to the Commissioner, fully justified with the appropriate attachments such as court orders, decrees or other papers. Such application shall contain full information regarding the individual including his cash balance, the sum invested, the number of shares in the Osage mineral estate, total income from all sources including that paid on behalf of minors, the family status and the occupation or industry of the applicant. When request is made for payment to the individual without supervision, the record of said individual and his ability to handle such funds shall be shown.

§ 108.8 Purchase of land.

Upon written application of an adult Indian, the superintendent may disburse not to exceed $10,000 from the surplus funds of such Indian for the purchase of land, the title to which has been examined and accepted by the special attorney for the Osage Indians or other legal officer designated by the Commissioner. In all cases title must be taken by deed containing a clause restricting alienation or encumbrance without the consent of the Secretary of the Interior or his authorized representative.

§ 108.9 Construction and repairs.

Upon written application by an adult Indian, the superintendent may disburse not to exceed $1,000 during any one fiscal year from the surplus funds of such Indian to make repairs and improvements to restricted real property and in addition not to exceed $300 for new construction. When such expenditures are being made on property producing an income, reimbursement shall be required from such income unless otherwise directed by the Commissioner. When an Indian refuses to make application for funds to defray the cost of repairs necessary to preserve restricted property, the superintendent may, when authorized by the Commissioner, expend the surplus funds of the Indian for such repairs.

§ 108.10 Purchase of automotive equipment.

The superintendent may disburse from the surplus funds of an adult Indian not to exceed $2,000 for the purchase of automotive equipment when the Indian agrees in writing to carry property and liability insurance on the automotive equipment and to reimburse his surplus funds account from allowance funds within 24 months. No disbursement of surplus funds for the purchase of automotive equipment shall be made if the fulfillment of the reimbursable agreement will endanger the payment of taxes, insurance or other obligations, or result in the inability of the Indian to meet his current living expenses from allowance funds.

§ 108.11 Insurance.

The superintendent may obtain policies of insurance covering the restricted property, real or personal, of minor Indians and pay the premiums thereon from the funds of the minors. Upon application by an adult Indian the superintendent may procure insurance on any restricted property, real or personal, owned by the applicant and pay the necessary premiums from his surplus or allowance funds. When authorized by the Commissioner, the superintendent may also procure insurance on restricted property, real or personal, of any adult Indian who neglects or refuses to take out such insurance.

§ 108.12 Costs of recording and conveyancing.

The superintendent may expend the surplus funds of an Indian to make direct payment of recording fees and costs, of conveyancing, including abstracting costs, which are properly payable by the Indian.

§ 108.13 Telephone and telegraph messages.

The superintendent may expend the surplus funds of an Indian to make direct payment for telephone and telegraph messages sent by the agency or received at the agency at the instance

of the Indian or his guardian or attorney.

§ 108.14 Miscellaneous expenditure of surplus funds.

Upon application by an adult Indian the superintendent may disburse the surplus funds of such Indian for the following purposes:

(a) Medical, dental, and hospital expenses for the applicant or a member of his family, not to exceed one thousand dollars ($1,000) during any one fiscal year.

(b) Funeral expenses, including the funeral feast, of a deceased member of his family, in an amount not to exceed one thousand dollars ($1,000).

(c) A tombstone or monument to mark the grave of a deceased member of his family in amount not to exceed five hundred dollars ($500).

(d) Court costs in any judicial proceeding to which the applicant is a party.

(e) Bond premiums, except bail and supersedeas bonds.

(f) For miscellaneous purposes, not to exceed five hundred dollars ($500) during any one fiscal year.

§ 108.15 Collections from insurance companies.

Moneys collected from insurance companies for loss or damage to restricted real or personal property shall be deposited to the credit of the Indian owner as surplus funds. Moneys so deposited to the credit of an adult Indian may, upon the written application of the Indian, be disbursed by the superintendent for the purpose of repairing or replacing the property. Moneys collected from insurance companies for loss or damage to unrestricted real or personal property shall be paid to the Indian for his unrestricted use.

§ 108.16 Reimbursement to surplus funds.

When expenditures have been made from surplus funds upon the condition, and with the written agreement of the Indian, that reimbursement or repayment shall be made from future allowance funds, the superintendent is authorized to withhold from succeeding quarterly payments or other allowance funds such amounts as may be necessary to effect reimbursement within a period not exceeding 24 months from date of the first expenditure under the given authority.

§ 108.17 Inactive surplus funds accounts.

When the balance of surplus funds to the credit of an adult Indian is less than $300 and when there is no likelihood of its increase within 90 days, the superintendent may disburse the entire balance to the Indian owner for his unrestricted use.

§ 108.18 Withdrawal and payment of segregated trust funds.

The withdrawal and payment of segregated trust funds will be made only upon application and satisfactory evidence that the withdrawal and payment of such funds would be to the best interest of the Indian in view of all the circumstances shown to exist. The segregated trust funds of an Indian under guardianship or an Indian under 21 years of age shall not be released and paid except to a guardian appointed by a proper court and after the filing of a bond approved by the court conditioned upon the faithful handling of the funds. Applications for the withdrawal and payment of segregated trust funds must be made upon the forms prescribed by the Secretary for that purpose.

§ 108.19 Debts of Indians.

No indebtedness of Indians will be paid from their funds under the control or supervision of the Secretary unless authorized in writing and obligated against their accounts by the superintendent or some other designated employee except in cases of emergency involving the protection or preservation of life or property, which emergency must be clearly shown. With this exception, no authorization or obligation against the account of any Indian for indebtedness incurred by him shall be made by the superintendent unless specifically authorized by the regulations in this part.

§ 108.20 Purchase orders.

Purchase orders may be issued by the superintendent for expenditures authorized by the regulations in this part or for expenditures specifically

authorized by the Commissioner. When necessary to prevent hardship or suffering, purchase orders may be issued by the superintendent against the future income of an Indian in an amount not to exceed 80 percent of the anticipated quarterly payment. The payment of purchase orders issued against future income shall be contingent upon the availability of funds.

§ 108.21 Fees and expenses of attorneys.

When payment of an attorney fee for services to an Indian is to be made from his surplus funds, the employment of the attorney by the Indian must be approved in advance. All fees will be determined on a quantum merit basis and paid upon completion of the services. The superintendent may approve the employment of an attorney, determine the fee, and disburse the surplus funds of the Indian in payment thereof when the fee does not exceed $500. Upon application by the Indian and upon the presentation of properly authenticated vouchers, the superintendent may disburse the surplus funds of the Indian in an amount not to exceed $200 in payment of necessary expenses incurred by the attorney.

§ 108.22 Disbursements to legal guardians.

Any disbursement authorized to be made to an Indian by the regulations of this part may, when the Indian is under guardianship, be made by the superintendent to the guardian. All expenditures by a guardian of the funds of his ward must be approved in writing by the court and the superintendent.

§ 108.23 Transactions between guardian and ward.

Business dealings between the guardian and his ward involving the sale or purchase of any property, real or personal, by the guardian to or from the ward, or to or from any store, company or organization in which the guardian has a direct interest or concern or contrary to the policy of the Department and shall not be approved by the superintendent without specific authority from the Commissioner.

§ 108.24 Compensation for guardians and their attorneys.

(a) The superintendent may approve compensation for services rendered by the guardian of an Indian on an annual basis, the amount of the compensation to be determined by application of the following schedule to the moneys collected by the guardian:

First $1,000 or portion thereof, not to exceed 10 percent.
Second $1,000 or portion thereof, not to exceed 9 percent.
Third $1,000 or portion thereof, not to exceed 8 percent.
Fourth $1,000 or portion thereof, not to exceed 7 percent.
Fifth $1,000 or portion thereof, not to exceed 6 percent.
Sixth $1,000 or portion thereof, not to exceed 5 percent.
Seventh $1,000 or portion thereof, not to exceed 4 percent.
Eighth $1,000 or portion thereof, not to exceed 3 percent.
Ninth $1,000 or portion thereof, not to exceed 2 percent.
All above $9,000 not to exceed 1 percent.

(b) Balance carried forward from previous reports and moneys received by a guardian or his attorney as compensation shall be excluded in determining the compensation of the guardian or his attorney.

(c) The attorney for a guardian shall be allowed compensation in an amount equal to one-half of the amount allowed the guardian under the foregoing schedule except when such attorney is himself the guardian and acting as his own attorney, in which event he shall be allowed a fee of not to exceed one-fourth of the amount allowed the guardian under the foregoing schedule in addition to the fee as guardian.

(d) The superintendent may in his discretion permit the guardian to collect rentals from restricted city or town properties belonging to his ward.

§ 108.25 Charges for services to Indians.

The superintendent shall make the following charges for services to Indians: Five per cent of all interest and non-liquidating dividends received from all types of securities, including stocks, bonds, and mortgages held in trust for individual Indians and interest on group investments. Such fees shall be deposited in the Treasury of

the United States to the credit of the fund "Proceeds of Oil and Gas Leases, Royalties, etc., Osage Reservation, Oklahoma".

§ 108.26 Expenses incurred pending qualification of an executor or administrator.

Pending the qualification of the executor or administrator of the estate of a deceased Indian of one-half or more Indian blood who did not have a certificate of competency at the time of his death, the superintendent may authorize the extension of credit for the following purposes, subject to allowance of claims by the executor or administrator and approval thereof by the court:

(a) Funeral expenses, including the cost of a funeral feast, in an amount not to exceed $1,000.

(b) Necessary expenses in hearings before the Osage Agency involving the approval or disapproval of last wills and testaments.

(c) Expenses necessary to preserve restricted property.

§ 108.27 Custody of funds pending administration of estates.

(a) *Estates of Indians of less than one-half Indian blood and estates of Indians who had certificates of competency.* Upon the death of an Indian of less than one-half Indian blood or an Indian who had a certificate of competency, the superintendent shall pay to the executor or administrator of the estate all moneys and securities, other than segregated trust funds to the credit of the Indian and all funds which accrue pending administration of the estate.

(b) *Estates of Indians of one-half or more Indian blood who did not have certificates of competency.* Upon the death of an Indian of one-half or more Indian blood who did not have a certificate of competency at the time of his death, the following classes of funds, less any amount hypothecated for the payment of taxes as provided in § 108.2 shall be paid by the superintendent to the executor or administrator of the estate:

(1) Allowance funds to the credit of the Indian.

(2) Any quarterly payment authorized prior to the death of the Indian.

(3) Interest on segregated trust funds and deposits computed to the date of death.

(4) Rentals and income from restricted lands collected after the death of the Indian which were due and payable to the Indian prior to his death.

Except as provided in § 108.28, the superintendent shall not pay to the executor or administrator any surplus funds to the credit of the Indian or any funds, other than those listed in paragraphs (b) (1) (2) (3) and (4) of this section which accrue pending administration of the estate.

§ 108.28 Payment of claims against estates.

The superintendent may disburse to the executor or administrator of the estate of a deceased Indian of one-half or more Indian blood who did not have a certificate of competency at the time of his death sufficient funds out of the estate to pay the following classes of claims approved by the court:

(a) Debts authorized by the superintendent during the lifetime of the Indian.

(b) Expenses incurred pending the qualifications of an executor or administrator under authority contained in § 108.26.

(c) Expenses of administration, including court costs, premium on bond of executor or administrator, transcript fees and appraiser fees.

(d) Living expenses incurred within 90 days immediately preceding the date of death of the Indian.

(e) Allowance for reasonable living expenses each month for 12 months to a surviving spouse who is entitled to participate in the distribution of the estate and who is in need of such support.

(f) Allowance for reasonable living expenses each month for 12 months for each child of the decedent under 21 years of age who is entitled to participate in the distribution of the estate and who is in need of such support.

(g) Insurance premiums and license fees on restricted property.

(h) Not to exceed $1,000 for the preservation and upkeep of restricted

property including the services of a caretaker when necessary.

(i) Debts incurred during the lifetime of the Indian but not authorized by the superintendent, if found by the Commissioner to be just and payable. The superintendent shall disburse no funds to an executor or administrator for the payment of the foregoing classes of claims unless the executor or administrator has no other funds in his hands available for the payment of such claims.

[22 FR 10554, Dec. 24, 1957, as amended at 35 FR 1000 June 18, 1970]

§ 108.29 Sale of improvements.

The superintendent may approve the sale of improvements on restricted Indian lands when such improvements are appraised at not more than $500 and when the owner has submitted a written request that the sale be made and a statement that the improvements can no longer be used by him. The proceeds of all such sales shall be deposited to the credit of the Indian as surplus funds. Improvements consisting of buildings, etc., located on property within the Osage villages of Pawhuska, Hominy, and Grayhorse may, upon approval of the superintendent, be disposed of to other Osage Indians. The superintendent may disburse the surplus funds of the purchaser to consummate the transaction. Sale of such improvements to non-Indian or non-Osage Indians must be approved by the Commissioner.

§ 108.30 Sale of personal property.

The superintendent may approve the sale of restricted personal property other than livestock. The superintendent may also approve the sale of livestock when authorized so to do by special or general instructions from the Commissioner. The proceeds from the sale of personal property other than livestock shall be deposited to the credit of the Indian as surplus funds unless the surplus funds from which said property was purchased have been reimbursed from allowance funds, in which case the proceeds from such sale shall be disbursed as allowance funds. If partial reimbursement only has been made, such portion of the proceeds of sale as may be necessary to complete the reimbursable agreement shall be deposited to the credit of the Indian as surplus funds and the balance, if any, shall be disbursed as allowance funds. The proceeds from the sale of livestock shall be deposited in conformity with general or specific instructions from the Commissioner.

§ 108.31 Removal of restrictions from personal property.

The superintendent may relinquish title to personal property (other than livestock) held by the United States in trust for the Indian when to do so will enable the Indian to use the property as part payment in the purchase of other personal property and when the remainder of the purchase price is to be made from other than surplus funds of the Indian.

§ 108.32 Funds of Indians of other tribes.

The funds of restricted non-Osage Indians, both adults and minors, residing within the jurisdiction of the Osage Agency, derived from sources within the Osage Nation and collected through the Osage Agency, may be disbursed by the superintendent, subject to the condition that all payments to third persons, including taxes and insurance premiums, shall be made upon the written authorization of the individual whose funds are involved, if an adult, and upon the written authorization of the parent or guardian, if a minor. The funds of restricted non-Osage Indians who do not reside within the jurisdiction of the Osage Agency shall be transferred to the superintendent of the jurisdiction within which the Indian resides, to be disbursed under regulations of the receiving agency.

§ 108.33 Signature of illiterates.

An Indian who cannot write shall be required to endorse checks payable to his order and sign receipts or other documents by making an imprint of the ball of the right thumb (or the left, if he has lost his right) after his name. This imprint shall be clear and distinct, showing the central whorl and striations and witnessed by two reputable persons whose addresses shall be given opposite or following

their names. An Indian may sign by marking "X" before two witnesses where he is unable to attach his thumb mark for physical reasons.

§ 108.34 Financial status of Indians confidential.

The financial status of Indians shall be regarded as confidential and shall not be disclosed except to the owner of the account or his authorized agent, unless authorized in advance by the Commissioner.

§ 108.35 Appeals.

Any decision by the superintendent may be appealed to the area director, any decision by the area director may be appealed to the Commissioner, and any decision by the Commissioner may be appealed to the Secretary.

PART 109—JUDGMENT FUNDS, SHOSHONE TRIBE OF THE WIND RIVER RESERVATION, WYOMING

Sec.

109.1 Program required; purposes for which expenditures may be made.
109.2 Family programs.
109.3 Scope of programs.
109.4 Authority to withhold funds.
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109.15 Repayment of loans.
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109.17 Disposition of funds in event of death.
109.18 Fee patent Indians.
109.19 Nonresident Indians.
109.20 Definition of "adult" and "minor."

AUTHORITY: Sec. 2, 53 Stat. 1128; 25 U.S.C. 572.

SOURCE: 22 FR 10557, Dec. 24, 1957, unless otherwise noted.

NOTE: For declaration of policy in disbursement of the judgment fund of the Shoshone Tribe of the Wind River Reservation, Wyo., see 4 FR 4797, Dec. 8, 1939.

§ 109.1 Program required; purposes for which expenditures may be made.

Pro rata shares of the Shoshone Judgment Fund shall be expended in accordance with an approved program and for: Purchase of land; improvement of land to be acquired or already held by the Indian; erection and improvement of suitable homes; education; purchase of building material, farming equipment, livestock, feed, food, seed, grain, tools, machinery, implements, household goods, bedding, clothing, and any other equipment, supplies, or training necessary to enable the Indian to fit himself for or to engage in farming, livestock raising, industry, or such other pursuits or vocations as will enable him to become self-supporting.

§ 109.2 Family programs.

The funds of a husband and wife, and of any other adults in a family group, may be used in the execution of a family program: *Provided*, The written consent of each individual is filed with the superintendent of the Wind River Indian Agency, Wyoming, hereafter in this subpart referred to as the superintendent. The available funds of a minor may be used in the execution of such family program, only on condition that (a) the funds of such minor are used solely in the development, repair or maintenance of real or personal property owned by said minor or held in trust for him, or in the creation development or completion of a project or undertaking or in the production of a gain or profit which will inure directly to the benefit of such minor, (b) title to any real property or fixtures, purchased wholly or in part with his money shall, except with the approval of the Commissioner of Indian Affairs, be held in trust for him, or (c) the adults convey to the United States in trust for such minor sufficient real or personal property to assure, insofar as is possible, that the minor upon attaining majority will have, in lieu of the money, property of a value equal to that of his funds used in the execution of the program. The superintendent shall not approve a family program which involves the transfer to a minor, in exchange for his funds, of assets of a nature which

will not be useful to him. The written consent of a minor who is 16 years of age or over, duly witnessed by at least two disinterested persons, shall accompany any family program which involves the use of said minor's funds.

§ 109.3 Scope of programs.

Programs shall contemplate the eventual use of the entire pro rata share or definitely provide for the conservation of a portion of such share, but in no case, except as hereinafter provided in this part, shall a program provide for the expenditure in the first year, after its approval, of more than $1,350 for each adult or more than $500 for each minor contributing to the program, and the program shall recognize that future use and expenditures for such program after the first year shall depend upon the proper use of the funds initially authorized to be expended: *Provided,* That the program of an adult may, with the approval of the Commissioner of Indian Affairs, provide for the expenditure in the first year after its approval of more than $1,350 when required for its most effective development. Expenditures of a minor's funds under this subpart shall not exceed a total sum of $500 and the remaining $1,850 of each minor's share shall be held intact until his majority, as required in section 2 of the act of July 27, 1939 (53 Stat. 1128).

§ 109.4 Authority to withhold funds.

The superintendent may stop disbursement of funds in the execution of an approved program upon evidence that the Indian is not complying with the program or that the continuation of the program or expenditures thereunder will not result in benefit to the Indian, and he may require either further justification for carrying out the program theretofore approved or the submission of a new program.

§ 109.5 Approval of programs.

The superintendent, subject to the limitations described in this subpart, shall approve or disapprove all programs submitted by Indians for the use and disbursement of pro rata shares of the Shoshone Judgment Fund. The Shoshone business council may act, or designate a committee of Indians to act, in an advisory capacity in the preparation and consideration of programs. Programs shall be prepared upon an approved form,[1] which shall be filled out in duplicate, one copy to be filed at the Wind River Indian Agency and one copy to be retained in the possession of the Indian.

§ 109.6 Right of appeal.

Indians shall have the right of appeal through the superintendent, to the Area Director, Billings Area Office, Bureau of Indian Affairs (referred to in this part as the Area Director) (a) from an action of the superintendent in withholding funds under § 109.4 and (b) from an action of the superintendent in disapproving a program under § 109.5. Appeals must be filed within 60 days with the superintendent who shall promptly forward the appeal, together with a statement of the facts in the case and of his reasons for the action taken by him, to the Area Director. An appeal will lie within a like period from the action of the Area Director to the Commissioner of Indian Affairs.

§ 109.7 Individual land purchases.

Before approving a program which includes an individual land purchase, the superintendent shall determine that such purchase will not conflict with the tribal land program of land purchase, consolidations and use authorized by the act of July 27, 1939 (53 Stat. 1128). No purchase of land by individuals using restricted funds shall be made within the ceded or opened portion of the Wind River Reservation.

§ 109.8 Issuance of purchase orders.

In the discretion of the superintendent, expenditures from pro rata share accounts, other than for the purchase of real property, may be made either by purchase order or by cash disbursement to the individual for the execution of an approved program.

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[1] Forms shall be made available at the Wind River Indian Agency.

§ 109.9 Purchase of real property.

Except as otherwise provided in § 109.18 payment shall be made by the superintendent, payment for the purchase of real property shall be made by the superintendent and such payment shall be made only after the title has been found satisfactory by the Area Director.

§ 109.10 Trust status of property.

Title to all real property to be acquired with restricted funds, when such property is situated within the diminished portion of the Wind River Reservation, shall be taken in trust for the individual. Title to personal property acquired pursuant to a purchase order shall be taken in trust. Livestock purchased and the offspring thereof shall be marked or branded with the individual brand of the owner. The provisions of this section are subject to the provisions of § 109.18.

§ 109.11 Allowances for support.

The superintendent may, upon proper showing, approve expenditures for the maintenance and support of the aged, infirm, decrepit, and incapacitated, whether adults or minors, and expenditures from that part of an adult's pro rata share which exceeds $1,450 for the support of an individual who has proved to be incapable of conducting a productive enterprise. The manner of disbursement and the amount of funds to be used for such purposes shall be determined by the superintendent, subject to the expenditure limitations set forth in § 109.3.

§ 109.12 Medical treatment.

The superintendent may approve the expenditure from that part of an adult's pro rata share which exceeds $1,450 to cover medical, dental, surgical, or hospital treatment, including nursing services. No part of a minor's pro rata share shall be expended for such purposes.

§ 109.13 Education.

The superintendent may authorize the expenditure of funds from any minors account for clothing because of school needs, and in addition, from the account of any minor who is in the ninth grade or higher for his tuition and other necessary expense in a government, private, public, or mission school.

§ 109.14 Transfer of funds.

When an Indian who is entitled to a pro rata share of the Shoshone judgment fund is a resident within the jurisdiction of another Indian agency, the superintendent may transfer to the superintendent of such other agency, to the credit of such Indian, the share of the Shoshone judgment fund to which such Indian is entitled. All funds so transferred shall be expended in accordance with this subpart.

§ 109.15 Repayment of loans.

Before approving a program, the superintendent shall make certain that provision has been made therein for the repayment of any amounts due on any loan, evidenced by a written agreement, from the United States or from the Shoshone Tribe.

§ 109.16 Funds not available for payment of certain debts.

Debts, except those to the United States and the Shoshone Tribe, incurred by Indians prior to July 27, 1939, shall not be paid from any funds made available from the Shoshone Judgment Fund. Debts of Indians will not be paid from the funds to be disbursed under this subpart unless previously authorized by the superintendent, except in emergency cases necessitating medical treatment or in the payment of last illness or funeral expenses,[2] as authorized in this subpart, and any other exceptional cases where specific authority is granted by the Commissioner of Indian Affairs.

§ 109.17 Disposition of funds in event of death.

Prior to the determination of heirs, the superintendent may disburse whatever amount he deems necessary and proper for the support of the widow of the decedent and for each minor child of the decedent. Before making the disbursement, the superin-

[2] Comptroller General Ruling A-62264, dated July 25, 1935.

tendent shall be reasonably satisfied that actual need for assistance exists and that the value of the estate is sufficient to justify such payments considering all proper claims. A complete record of all disbursements shall be reported by the superintendent to the examiner of inheritance and by the latter considered and included in his report of probate proceedings. After payment of all proper claims against the funds, including reimbursable or other debts due the United States or the Shoshone Tribe and excluding any claims arising out of debts incurred prior to July 27, 1939, the balance shall be transferred to the individual accounts of the heirs of the decedent in accordance with the approved heirship findings. Expenditures from inherited funds shall be made for purposes authorized in this part.

§ 109.18 Fee patent Indians.

For the purposes of this part, a "fee patent Indian" shall be an adult Indian who has received a patent in fee to his allotment. Fee patent Indians shall be required to submit a program, the approval of which shall be in conformity with §§ 109.1 through 109.6. Fee patent Indians shall not be required to make purchases through purchase orders, but shall have funds disbursed to them direct by the superintendent for such purchases. Funds of minor children of fee patent Indians may be included in an approved family program, but their expenditure shall be subject to the same provisions as cover the expenditure of the funds of minor children of Indians other than fee patent Indians. Fee patent Indians shall be required to conform to the provisions of § 109.9 only when the purchase of real property involves property situated within the diminished portion of the Wind River Reservation. Payments by fee patent Indians for real property outside the diminished portion of the Wind River Reservation may be made by them with funds disbursed to them by the superintendent. Except as otherwise provided in this section, fee patent Indians shall conform to all the provisions of this part.

§ 109.19 Nonresident Indians.

The provisions of § 109.18 pertaining to fee patent Indians shall also apply to Indians other than fee patent Indians who habitually reside away from the Wind River Reservation and have, to all intents and purposes, severed their affiliation with the tribe, and who shall furnish to the superintendent in writing a statement that they intend to continue to reside away from the reservation and evidence, satisfactory to the superintendent, of their competency and ability to support themselves and manage their own affairs.

§ 109.20 Definition of "adult" and "minor."

The term "adult" shall include all members of the tribe 18 years of age or over, and the term "minor" shall include all members of the tribe less than 18 years of age.

PART 110—DISTRIBUTION OF JUDGMENT AWARDED THE CHEROKEE NATION OR TRIBE OF INDIANS

Sec.
110.1 Definitions.
110.2 Purpose.
110.3 Persons eligible to share in payment.
110.4 Payment of shares to living enrollees.
110.5 Shares of deceased enrollees.
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110.7 Assignment of shares.
110.8 Power of attorney.
110.9 Shares of deceased heirs.
110.10 Disposition of unclaimed and unpaid shares.

AUTHORITY: Sec. 8, 76 Stat. 776, 25 U.S.C. 998.

SOURCE: 27 FR 10321, Oct. 23, 1962, unless otherwise noted.

§ 110.1 Definitions.

(a) "Director" means the Area Director, Bureau of Indian Affairs, Federal Building, Muskogee, Oklahoma, or his authorized representative.

(b) "Tribe" means the Cherokee Nation or Tribe of Indians of Oklahoma.

(c) "Enrollee" means a person whose name appears on the rolls of the Cherokee Nation which rolls were closed and made final as of March 4, 1907, pursuant to the Act of April 26,

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1906, and subsequent additions thereto.

(d) "Distribute" means to apportion or divide into shares the proportional shares of deceased heirs or legatees.

(e) "Minor" means any person under twenty-one years of age.

(f) "Act" means the Act of Congress approved October 9, 1962.

[27 FR 10321, Oct. 23, 1962, as amended at 28 FR 1253, Feb. 8, 1963]

§ 110.2 Purpose.

The regulations in this part are to govern the disposition of judgment funds of the Cherokee Nation or Tribe of Indians of Oklahoma pursuant to the Act.

§ 110.3 Persons eligible to share in payment.

All enrollees shall be eligible to receive a per capita share. The Director shall make forms, applications, and instructions available to all claimants.

§ 110.4 Payment of shares to living enrollees.

(a) Except as provided herein, the Director shall pay the share of a living enrollee directly to him upon receipt of an application filed on the form provided for that purpose by the Director.

(b) The Director shall pay a share or a proportional share payable to a person under legal disability in accordance with such procedures as the Director determines will adequately protect the best interest of such person.

§ 110.5 Shares of deceased enrollees.

(a) The Director is authorized to pay a share due a deceased enrollee or a proportional share due a deceased heir or legatee to his heirs or legatees as determined by the Director from a proof of death and inheritance satisfactory to the Director and dated and filed after the date of the Act.

(b) All determinations of heirs or legatees shall be made by the Director under the laws of succession and testacy of the state of residence of the decedent on the date of his death and the Director's findings and determinations shall be final and conclusive.

(c) The filing of a request within 3 years from the date of the Act, signed by an heir or legatee, for payment of a share due a named deceased enrollee shall be considered as a claim filed for and on behalf of all heirs and legatees and shall be construed to comply with the three-year limitation on the filing of claims imposed by section 3(a) of the Act.

§ 110.6 Payment of shares of minors.

The Director shall pay a share or a proportional share payable to a minor in accordance with procedures as the Director determines will adequately protect the interests of such persons.

§ 110.7 Assignment of shares.

No part of any of the funds which may be distributed shall be subject to any lien, debt, or claim of any nature whatsoever against the Tribe or individual Indians, except delinquent debts owed by the Tribe to the United States, or owed by individual Indians to the Tribe or to the United States.

§ 110.8 Power of attorney.

Powers of attorney will not be recognized, nor will any order given to another person by anyone entitled to share in the payment be honored.

§ 110.9 Shares of deceased heirs.

The Director shall not distribute proportional shares of deceased heirs or legatees amounting to $10 or less and he shall not pay an inherited share amounting to $5 or less. The unpaid and undistributed shares shall revert to the Tribe.

§ 110.10 Disposition of unclaimed and unpaid shares.

All per capita shares of living enrollees and proportional shares of deceased enrollees for which a claim has not been filed within 3 years from the date of approval of the Act, as provided by the Act and in § 110.5 shall revert to the Tribe. The Director shall keep accurate records of all monies reverting to the Tribe.

PART 111—REIMBURSEMENT OF THE UTE TRIBE OF THE UINTAH AND OURAY RESERVATION, UTAH

ADJUDICATION OF CLAIMS OF FORMER MIXED-BLOOD MEMBERS

Sec.
111.1 Definitions.
111.2 Purpose.
111.3 Eligibility for reimbursement.
111.4 Information required from claimant.
111.5 Burden of proof.
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111.8 Special instruction.

AUTHORITY: Sec. 3, 84 Stat. 843.

SOURCE: 36 FR 4870, Mar. 13, 1971, unless otherwise noted.

ADJUDICATION OF CLAIMS OF FORMER MIXED-BLOOD MEMBERS

§ 111.1 Definitions.

As used in this part—

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Commissioner" means the Commissioner of Indian Affairs.

(c) "Financial Management Officer" means the Chief of the Division of Financial Management, Post Office Box 127, 500 Gold Avenue SW., Albuquerque, NM 87103.

(d) "Heirs" means those persons entitled to inherit under State law from a person whose name appears on the final roll of mixed-blood Indians that was prepared pursuant to section 8 of the Act of August 27, 1954 (68 Stat. 868).

(e) "Legatee" means those persons entitled to personalty or realty under a valid will of a person whose name appears on the final roll of mixed-blood Indians that was prepared pursuant to section 8 of the Act of August 27, 1954 (68 Stat. 868).

[36 FR 4870, Mar. 13, 1971; 36 FR 6080, Apr. 2, 1971]

§ 111.2 Purpose.

The rules in this part are to govern payment to be made by the Secretary pursuant to section 3 of the Act of September 18, 1970, to those persons whose names appear on the final roll of mixed-blood Indians that was prepared pursuant to section 8 of the Act of August 27, 1954 (68 Stat. 868) or to their heirs or legatees.

§ 111.3 Eligibility for reimbursement.

Each person whose name appears on the final roll of mixed-blood Indians that was prepared pursuant to section 8 of the Act of August 27, 1954 (68 Stat. 868) or their heirs or legatees may obtain a copy of the form for Claim for Reimbursement Due as provided by Public Law 91-403, approved September 18, 1970, by request directed to the Financial Management Officer, Bureau of Indian Affairs, Post Office Box 127, 500 Gold Avenue SW., Albuquerque, NM 87103. The completed claim must be filed with the Financial Management Officer at the same address not later than September 18, 1973.

§ 111.4 Information required from claimant.

Each Claim for Reimbursement shall contain the following information:

(a) The name and address of the claimant, and if the claimant is a minor or mental incompetent, the name, address, and representative capacity of the person executing the claim on behalf of the minor or mental incompetent.

(b) The roll number if the claimant is an enrollee on the roll of mixed-blood Indians prepared pursuant to section 8 of the Act of August 27, 1954 (68 Stat. 868).

(c) The name and roll number of the deceased enrollee through which a legatee is claiming and the place and date of the deceased enrollee's death. A certified copy of the decree of distribution or other final order of the probate court should be submitted with the Claim for Reimbursement.

(d) The name and roll number of the deceased enrollee through which an heir is claiming, the place and date of the deceased enrollee's death and the relationship of the claimant to the deceased enrollee accompanied by copies of birth or marriage certificates or other evidence proving the relationship.

§ 111.5 Burden of proof.

The burden of proof rests upon the claimant to establish that he or she is entitled to reimbursement as an enrollee, heir, or legatee.

§ 111.6 Appeals.

Any person whose claim for reimbursement is rejected may appeal by filing such appeal in writing with the Financial Management Officer not more than thirty (30) days from receipt of the notice of rejection. The claimant must submit with his appeal any supporting data not previously furnished. When upon review of the evidence submitted by the appellant, the Financial Management Officer is satisfied that the claimant has established his right for reimbursement, the appellant shall be so notified. In any case where the Financial Management Officer determines the claimant ineligible, the Financial Management Officer shall forward the appeal together with the complete record and his recommendation thereon to the Commissioner for transmittal to the Secretary.

§ 111.7 Action by the Secretary.

The decision by the Secretary on an appeal shall be final and the claimant shall be given written notice of the decision.

§ 111.8 Special Instruction.

To facilitate the work of the Financial Management Officer, the Commissioner may issue special instruction not inconsistent with the rules of this part.

PART 112—DISTRIBUTION OF JUDGMENT FUNDS AWARDED TO THE OSAGE TRIBE OF INDIANS IN OKLAHOMA

Sec.

112.1 Definitions.
112.2 Purpose.
112.3 Notice of time limit and place for filing claims.
112.4 Issuance of Orders of Distribution.
112.5 Segregation of per capita shares.
112.6 Distribution of share of deceased allottee.
112.7 Notice of orders to claimants and distributees.
112.8 Appeal from an Order of Distribution.
112.9 Disbursement of distributed shares.
112.10 Miscellaneous provisions.

AUTHORITY: 5 U.S.C. 301; 86 Stat. 1295.

SOURCE: 38 FR 9163, Apr. 11, 1973, unless otherwise noted.

§ 112.1 Definitions.

(a) "Act" means the act of October 27, 1972 (86 Stat. 1295).

(b) "Allottee" means a person whose name appears on the roll of the Osage Tribe of Indians approved by the Secretary of the Interior on April 11, 1908, pursuant to the act of June 28, 1906 (34 Stat. 539).

(c) "Regional Solicitor, Tulsa" means the Regional Solicitor for the Tulsa Region of the Office of the Solicitor, U.S. Department of the Interior, P.O. Box 3156, Tulsa, Oklahoma 74101.

(d) "Distributee" means one to whom a distribution is ordered pursuant to the regulations in this part.

(e) "Secretary" means the Secretary of the Interior or his authorized representative.

(f) "Superintendent" means the Superintendent, Osage Agency, Bureau of Indian Affairs Pawhuska, Oklahoma 74056.

[38 FR 9163, Apr. 11, 1973, as amended at 39 FR 41707, Dec. 2, 1974]

§ 112.2 Purpose.

The regulations in this part govern the distribution, pursuant to the act, of judgment funds awarded to the Osage Tribe of Indians of Oklahoma. All funds appropriated by the act of January 8, 1971 (84 Stat. 1981), in satisfaction of a judgment in the Indian Claims Commission against the United States in dockets numbered 105, 106, 107, and 108, together with interest thereon, are to be distributed, except the sum of $1 million and any funds that revert to the Osage Tribe and except the amount allowed for attorney fees and expenses and the cost of distribution.

§ 112.3 Notice of time limit and place for filing claims.

The act provides for distribution of funds to allottees and heirs of Osage Indian blood of deceased allottees.

(a) All claims for per capita shares by heirs of Osage Indian blood shall be filed with the Superintendent, Osage Agency, Bureau of Indian Affairs, Pawhuska, Okla. 74056, not later than April 27, 1974. An individual who claims as an heir of Osage Indian blood should make a timely filing of a claim which identifies, by name and allotment number, each allottee in whose share the individual claims an interest, in order that the Superintendent may notify the individual when the order of distribution for each such allottee is made. Failure to file a claim in this manner may prevent an individual from receiving notice of distribution in an instance in which he is an interested party. Failure of an heir of Osage Indian blood to file a claim will not necessarily prevent the distribution to such heir of the portion of the allottee's share due that heir if sufficient evidence to support such distribution is available to the Superintendent. However, no heir who fails to file a claim within the prescribed period (on or before April 27, 1974) shall after that period have any right to any distribution other than that ordered by the Superintendent based on evidence available to the Superintendent during that period. Unclaimed shares of distributees are required by statute to revert to the Osage Tribe 6 months after determination of their right to share.

(b) Distribution of a living allottee's own share will be made without the filing of a claim.

§ 112.4 Issuance of Orders of Distribution.

The Superintendent, Osage Agency, Bureau of Indian Affairs, Pawhuska, Okla. 74056, is authorized to issue the Orders of Distribution in accordance with the act and the regulations in this part. The Superintendent's decisions thereon shall be final unless a timely appeal therefrom is filed in accordance with § 112.8.

§ 112.5 Segregation of per capita shares.

The Superintendent shall segregate one per capita share for each allottee for distribution as follows:

(a) One share for distribution to each such allottee who is living on the date the Order for Distribution for that share is issued; and

(b) One share for distribution to the heir or heirs of Osage Indian blood of each allottee who is deceased on the date the Order of Distribution for that share is issued, to be divided among such heirs in such proportions as shall be computed in accordance with § 112.6.

§ 112.6 Distribution of share of deceased allottee.

The Superintendent shall issue an Order of Distribution which, except as otherwise provided in this § 112.6, divides the share of a deceased allottee leaving heirs of Osage Indian blood in such proportions as the allottee's heirs of Osage Indian blood would have shared in the estate of the allottee if the allottee had died intestate leaving one or more individuals of Osage Indian blood as the allottee's only heirs at law under the Oklahoma law of intestate succession. In preparing such an order, the Superintendent shall accept as accurate any unambiguous determination of heirship, of an allottee or of the heir of an allottee, either made by the Secretary prior to April 18, 1912, or contained in a final order of an Oklahoma court after that date. When no such unambiguous determination is available, such order shall be based upon all other pertinent heirship evidence available to the Superintendent. When one or more of the immediate heirs of Osage Indian blood of an allottee is deceased, the heirs of Osage Indian blood of such deceased heirs shall be ascertained, successively among all remote heirs of Osage Indian blood of the allottee, in the sequence in which the deaths of the heirs occurred until the identities of all living remote heirs of Osage Indian blood, and the respective proportions of the share to which they are entitled, have been ascertained. To qualify for distribution as an heir, it must be established that the distributee and each heir of the allottee

through whom the claim is traced had Osage Indian blood acquired either from an allottee or from a common ancestor of an allottee and the distributee.

§ 112.7 Notice of orders to claimants and distributees.

Notice of an Order of Distribution shall be mailed, on the date of issuance of such order, to the allottee whose share is being distributed if living, but if not living, to (a) each distributee named therein, (b) each claimant whose claim asserts entitlement to a portion of the allottee's share, and (c) each person who had not filed a claim on the date of issuance of such order but is in that order determined by the Superintendent to be ineligible to receive a portion of the allottee's share. Such notice shall be accompanied by a copy of the Order of Distribution and shall contain instructions for filing an appeal in accordance with paragraphs (a) or (b) and (c) of § 112.8.

§ 112.8 Appeal from an Order of Distribution.

(a) An Order of Distribution of the share of an allottee living on the date the order is issued shall become final 3 days from the date thereof unless an appeal is filed by an interested party with the Superintendent before the expiration of those 3 days.

(b) An Order of Distribution of the share of an allottee who is deceased on the date the order is issued shall become final 30 days from the date thereof unless an appeal is filed by an interested party with the Superintendent before the expiration of those 30 days.

(c) Each appeal must contain a statement of the reasons that the appellant considers the Order of Distribution to be subject to error, and each appellant must, at the time of filing his appeal, mail a copy thereof to each person named as a distributee in the Order of Distribution. The Superintendent shall furnish a copy of the appeal to each other interested party to whom a copy of the Order of Distribution was mailed.

(d) The Regional Solicitor, Tulsa, is authorized to determine appeals from Orders of Distribution in accordance with the act and the regulations in this part. The Regional Solicitor's decision thereon shall be final on the date of the issuance of his decision and shall constitute the final action of the Department of the Interior in connection with such appeal.

(e) The Superintendent may, in his discretion for good cause shown, order partial distribution of any undisputed segment of any share for which an appeal is pending when such distribution will not be affected by the appeal decision on the disputed portion of the share.

[38 FR 9163, Apr. 11, 1973, as amended at 39 FR 41707, Dec. 2, 1974]

§ 112.9 Disbursement of distributed shares.

When an Order of Distribution, either as issued or as amended by decision on appeal, has become final, the Superintendent shall either disburse to distributees the amounts distributed to them or deposit such amounts to appropriate accounts, in accordance with the following guidelines:

(a) When the amount distributed to any heir is less than $20, the amount shall be segregated in a special account for that heir until all Orders of Distribution have become final, at which time the sum of all amounts thus segregated to such account shall be disbursed or redeposited as provided in paragraphs (b), (c), (d) and (e) of this § 112.9, if such sum equals or exceeds $20. When such sum is less than $20, such sum in each of such accounts, and all unclaimed shares, and all amounts awarded to distributees which remain unclaimed for 6 months after the Order of Distribution has become final, shall, subsequent to April 27, 1974, be deposited to the account of the Osage Tribe as sums which have reverted to it.

(b) Living allottees having certificates of competency shall have their distributions disbursed directly to them.

(c) Living allottees not having certificates of competency shall have their distributions deposited to their accounts, subject to withdrawal by them at their request.

(d) Heirs of Osage Indian blood who are at least 18 years of age and are not under guardianship shall have their distributions disbursed directly to them.

(e) Heirs of Osage Indian blood who are under guardianship shall have their distributions deposited to their accounts, subject to disbursement to the distributees or their guardians or other persons on their behalf on such terms and conditions as the Superintendent shall consider to be in their best interests during their legal disability, after which the remaining portion shall be disbursed to such distributees.

(f) Heirs of Osage Indian blood who are under 18 years of age shall have their distributions deposited to their accounts, with the funds represented by such deposits invested at favorable rates of return for prudent investments, to be disbursed with earnings thereon only when the respective distributees for whom they are held shall attain the age of 18 years.

§ 112.10 Miscellaneous provisions.

(a) Powers of attorney, assignments, and orders given to another person by anyone entitled to share in the payment will not be recognized.

(b) None of the funds distributed are subject to Federal or State income taxes.

(c) Claimants are hereby notified that criminal penalties are provided by statute (18 U.S.C. 1001) for knowingly filing fraudulent information.

PART 112a—MANAGEMENT OF OSAGE JUDGMENT FUNDS FOR EDUCATION AND SOCIOECONOMIC PROGRAMS

Sec.

112a.1 Purpose and scope.
112a.2 Definitions.
112a.3 Principal to be invested, interest only to be expended.
112a.4 Eligible applicants.
112a.5 Establishment of Osage Tribal Education Committee.
112a.6 Duties and responsibilities of the Osage Tribal Education Committee.
112a.7 Other socioeconomic programs.
112a.8 Use of funds for committee administrative costs
112a.9 Regulations to apply for indefinite period of time.
112a.10 Appeals.

AUTHORITY: 86 Stat. 1295.

SOURCE: 43 FR 37175, Aug. 22, 1978; 43 FR 55759, Nov. 29, 1978, unless otherwise noted.

§ 112a.1 Purpose and scope.

(a) Pub. L. 92-586, enacted October 27, 1972, makes provision whereby the sum of $1 million, together with other funds which revert to the Osage Tribe, "may be advanced, expended, invested, or reinvested for the purpose of financing an education program or other socioeconomic programs of benefit to the Osage Tribe of Indians of Oklahoma, such programs to be administered as authorized by the Secretary of the Interior."

(b) The purpose of the regulations in this part is to set forth procedures and guidelines to govern the use of such funds. Included are: (1) Application requirements and processes for use of the funds for educational purposes by eligible persons; and (2) procedures whereby the funds may also be used for socioeconomic programs of benefit to the Osage Tribe.

§ 112a.2 Definitions.

(a) "Act" means Pub. L. 92-586 enacted October 27, 1972 (86 Stat. 1295).

(b) "Secretary" means the Secretary of the Department of the Interior.

(c) "Assistant Secretary" means the Assistant Secretary for Indian Affairs.

(d) "Superintendent" means the official in charge of the Bureau of Indian Affairs Osage Indian Agency.

(e) "Reverted funds" means the unpaid portions of the per capita distribution funds, as provided by the Act, which were not distributed because they were: (1) Unclaimed within the period specified by the Act; or (2) for an amount totaling less than $20 due an individual from one or more shares of one or more Osage allottees. The Act provides that such unpaid funds revert to the Osage Tribe and upon their reverting thereto are to be used together with the $1 million fund for education or other socioeconomic programs of benefit to the Osage Tribe.

(f) "Allottee" means a person whose name appears on the roll of the Osage Tribe of Indians approved by the Secretary of the Interior on April 11, 1908, pursuant to the Act of June 28, 1906 (34 Stat. 539).

(g) "Osage Tribal Education Committee" means the committee selected to administer the provisions of this part as specified by § 112a.5.

(h) "Other socioeconomic programs" means activities, other than educational, for which funds may be used, as specified by § 112a.7.

(i) "Educational programs/purposes" means those endeavors or activities for which funds governed by this part may be used to advance the formal academic education or vocational/technical training of eligible persons.

(j) "Point system" means a set of specific conditions appropriate to an application for educational assistance for which a specified number of points are awarded to an application for each condition met. Such point system provides the basis for rating and ranking all applications for use of funds under this part.

(k) "Rating applications" means the method, or procedure, by which each and all applications are individually evaluated against the point system to determine (1) which, if any, of the conditions for which points are awarded, have been met by the applicant; and, (2) the total number of points earned by each applicant.

(l) "Ranking applications" means the process by which all applications, after having been rated, are placed in a descending order according to the total number of points awarded each.

§ 112a.3 Principal to be invested, interest only to be expended.

(a) The principal sum of $1 million and reverted funds shall be invested and reinvested at the highest available rate of interest by the Bureau of Indian Affairs on behalf of the Osage Tribe. Expenditures for the purposes of this part shall not be made from either the $1 million principal sum or reverted funds. Rather, expenditures shall be made against only the interest generated from such principal and reverted funds.

§ 112a.4 Eligible applicants.

(a) Any person of Osage Indian blood who is an allottee or a descendant of an allottee is eligible to apply for use of funds for the purposes prescribed by, and, in accordance with, the provisions of this part. All applicants for assistance shall, as a part of the application process, identify his allotment number if he or she is an original allottee; or, if applicant is a descendant of an allottee, then, the allottee through whom eligibility is claimed shall be identified.

§ 112a.5 Establishment of Osage Tribal Education Committee.

(a) In an effort to provide the Osage Tribe maximal opportunity to exercise their right to tribal self-determination, an Osage Tribal Education Committee shall be established to perform the responsibilities and provisions of this part.

(b) The committee shall perform all duties and responsibilities as set out in § 112a.6.

(c) The committee shall be selected and convene their first meeting on a date early enough to enable awards to begin with the second semester of the 1979–80 academic year.

(d) The Osage Tribal Education Committee shall be composed of seven members and shall include two (2) education staff members of the Bureau; and five (5) persons of Osage Indian blood who are allottees, or, descendants of original allottees. Of the five Osage members, at least three shall be legal residents of, or live within a 20-mile radius of one of the three Osage Indian villages. Of these, at least one shall reside within the specified radius of the Pawhuska Indian village; one, at least, within the specified radius of the Hominy Indian village; and, at least one within the specified radius of the Greyhorse Indian village. The remaining Osage committee members may include residents living in other parts of Oklahoma or the United States.

(e) Selection of the five Osage committee members shall be made by the Assistant Secretary in accordance with the following procedures and provisions.

(1) *Eligibility.* Any adult person of Osage Indian blood who is an allottee, or a descendant of an allottee is eligible to serve on the education committee.

(2) *Applications and nominations.* Formal application or nomination for committee membership shall be required. In accordance with the provisions of the following paragraph, any eligible person may make application for committee membership by submitting a brief statement requesting that he/she be considered a candidate for such committee and the reasons for desiring to serve on the committee; and, their qualifications; or, any Osage organization, including the Osage Indian village committees, may submit the name(s) and address(es) of eligible persons as their nominee(s) for the education committee. Nominees shall submit a statement expressing their willingness to serve on the committee. Applications and nominations shall be made by registered mail, within 45 days after these regulations become final, to:

Assistant Secretary—Indian Affairs, Attention: Director of Indian Education Programs (Osage Tribal Education Committee), 1951 Constitution Avenue NW., Washington, D.C. 20245.

(3) *Personal interview of applicants and nominees.* (i) Following the expiration date for receiving applications and nominations, the Bureau shall arrange for an initial review and screening of all applications/nominations. Thereafter, arrangements shall be made for personal interviews with all applicants or nominees who have been screened for consideration for committee membership. The personal interview shall be the primary method for selecting committee members, for, under controlled conditions, it can provide an objective process for selection of the most competent and effective persons to perform committee responsibilities in a fair and reasonable manner.

(ii) Each interview session shall utilize a standard interview instrument developed by an independent, experienced arbitration agency. The instrument shall be designed to measure the interviewees' responses to hypothetical problems which might be encountered in the administration of grant or scholarship programs. All interviews shall be conducted by the same arbitration agency responsible for the interview instrument.

(iii) Interviews shall be conducted at locations throughout the Nation which are central and in reasonably close proximity to applicants for the committee. Applicants shall not be compensated or reimbursed for expenses incurred as a result of interviews.

(iv) No portion of the $1 million fund shall be expended for purposes of the interview and/or selection of the Osage Tribal Education Committee.

(4) *Selection of committee members.* Upon completion of the interview, the arbitration agency shall recommend a reasonable number of applicants or nominees from which the Assistant Secretary for Indian Affairs shall select five Osage persons to serve on the Osage Tribal Education Committee. The Assistant Secretary shall also appoint two Bureau persons to the committee and shall notify all persons of their selection or appointment, and, shall also notify all applicants and nominees of the final selection. Thereafter, the Bureau shall arrange for the committee to begin assumption of duties and responsibilities.

(5) *Committee vacancies.* Any vacancy shall be filled in the same manner described by this section for the selection of committee members. The period of time for receiving applications shall not exceed 30 days with the expiration date to be announced by the Assistant Secretary. The Assistant Secretary may appoint an individual to serve for a temporary period of time until vacancy is filled. However, such appointment shall not exceed 45 days.

[43 FR 37175, Aug. 22, 1978; 43 FR 55759, Nov. 29, 1978, as amended at 44 FR 70140, Dec. 6, 1979]

§ 112a.6 Duties and responsibilities of the education committee.

(a) In order to (1) provide maximal use of the limited funds, (2) accommodate the anticipated large number of applications, and, (3) insure prompt, efficient, and fair treatment of all applications, a sound and equitable system for administering the program

is imperative. In this regard, therefore, and consistent with the policy of Indian self-determination, the Osage Tribal Education Committee shall develop an overall plan, including a systematic, sequential process for selecting awardees which avoids a "first come, first serve" method; and, instead, insures that all applications received prior to the specified closing date, shall be ranked simultaneously to enable equal competition for funds by all applicants.

(b) The procedure shall provide that (1) no funds shall be awarded until all applications have been ranked; and, (2) applications shall not be ranked until all have been rated against the point system.

(c) Specifically, the overall plan shall include:

(1) *Procedures for receiving and reviewing applications.* Such procedures shall set out the following:

(i) Beginning and closing dates for accepting applications;

(ii) Office and address from which application forms may be obtained;

(iii) Address to which applications are to be submitted; and any special method by which they are to be submitted, i.e., certified, registered, or regular mail;

(iv) Date by which all applicants shall have been notified by the committee of the decision relative to their application;

(v) Process by which applications shall be reviewed for completeness; and, how additional information shall be requested and received.

(2) *A point system for rating and ranking applications.* (i) The point system is, perhaps, the most important part of the overall plan as required by this section. It shall serve as the standard basis for rating and ranking each and all applications for financial assistance under this part, in an identical, objective manner. The point system shall set out specific conditions, or criteria, appropriate to an application for financial assistance, for which a specified number of points shall be awarded to those applications meeting the condition or conditions. For example, an applicant's scholastic achievement or grade average for the preceding semester could be one condition for which points would be awarded. In this regard, it could be determined that 5 points would be awarded an applicant who maintains a 2 grade point average. Each application shall be evaluated against the conditions specified by the point system to determing (A) which, if any, of the conditions applicant has met; (B) the total point value of the application, as derived from the conditions applicant has met; and (C) the value of each application in relationship to all applications, for ranking purposes. A fair point value of each condition set out by the point system shall be determined by the education committee.

(ii) In addition to those conditions for which the Osage Tribal Education Committee determines points are to be awarded, the point system shall include provisions whereby points shall also be awarded to those applications, wherein the applicant:

(A) Meets a specified Osage blood quantum as determined and established by the Osage Tribal Education Committee. The specified quantum shall be considered only for the purposes of the point system, and, shall not, in any way, affect or determine eligibility, as any person who meets the requirements of § 112a.4 is eligible to make application for aid under this part.

(B) Establishes that financial assistance is necessary, and that without such assistance the applicant's educational or career objectives would not be attainable. The financial information required shall be established by the Osage Tribal Education Committee.

(C) Provides evidence that other available financial resources have been applied for, and indicates whether or not such application(s) has been approved, and, if so, the amount approved; or, otherwise indicate the status of such application(s). The financial resources information required shall be determined by the Osage Tribal Education Committee. The number of points to be awarded for each of the foregoing conditions shall be determined by the Osage Tribal Education Committee. After all applications have been rated according to the point system, they shall be ranked

according to the total number of points awarded. Applications receiving the greatest number of points shall be first in line to receive financial aid as provided by this part. The point system shall specify whether applications are to be rated upon their receipt; at periodic intervals, or, after the specified closing date for receiving applications.

(3) *Procedures for awarding funds.* This shall include:

(i) Determinations as to whether awards are to be for a fixed amount, or, whether the amount is to be based upon the applicant's established individual need; and, a formula for affixing amounts.

(ii) The process and date by which applicants shall be notified as to whether or not they are to receive an award, and, how awards are to be announced or published.

(iii) Determinations as to whether payment of awards are to be made directly to the student, or to the educational institution which the respective applicant shall be attending. In addition, the education committee shall:

(A) Establish the time and place for convening regular committee meetings; conditions and procedures for convening special meetings; and, the procedures for notifying members of both regular and special meetings.

(B) Establish a procedure for the selection/election of a committee chairman and other officers considered appropriate.

(C) Develop a standard application form.

(D) Prepare an official document which sets out the overall plan established by the committee in compliance with the provisions of this part for submission to the Assistant Secretary for Indian Affairs for approval.

(E) Notify the Osage people, through appropriate media, of the procedures, processes, etc., set out by the overall plan for administering the $1 million fund within a reasonable time after these regulations become final.

(F) Any other responsibilities necessary and/or appropriate to effective performance of committee tasks.

Inasmuch as the overall plan encompasses the full amount of operating procedures, requirements, etc., to be used in administering the fund, the Assistant Secretary for Indian Affairs' approval of such plan shall be required. Any revisions of the approved overall plan shall require strong justification, and, shall also require approval of the Assistant Secretary for Indian Affairs. The approved overall plan shall be printed in its entirety and made available to persons requesting applications; and, upon request, to persons eligible for aid under this part.

§ 112a.7 Other socioeconomic programs.

(a) Applications for financial assistance for socioeconomic programs shall be in the form of a narrative proposal which provides a full description of the proposed program.

The narrative shall include (1) program objectives; (2) methods for attaining objectives; (3) staff requirements, i.e., number and qualifications; and, (4) program budget.

(b) Applications for socioeconomic program funding shall be considered only if the Osage Tribe is not eligible for participation in other programs which have the same objectives as those proposed by the application.

(c) The Osage Tribal Education Committee shall establish a procedure for considering such applications.

(d) The Osage Tribal Education Committee shall establish a maximum percentage to be used for funding socioeconomic programs. Such percentage shall not exceed 15 percent of the total funds available during any given year.

(e) Applications approved by the Osage Tribal Education Committee shall also require the approval of the Assistant Secretary—Indian Affairs.

§ 112a.8 Use of funds for committee administrative costs.

(a) A reasonable portion of funds available for expenditure may be used by the Osage Tribal Education Committee in the performance of their duties and responsibilities.

(b) The committee shall prepare and submit for the Assistant Secretary's approval, a budget for each calendar year. The budget may, at the discretion of the committee, provide for

travel and per diem of committee members. The amount used for program administration shall not exceed 5 percent of the total amount available, except, with the special approval of the Assistant Secretary.

§ 112a.9 Regulations to apply for indefinite period of time.

These regulations shall cease upon determination of the legal and appropriate body to administer the fund, and, upon the establishment of succeeding regulations.

§ 112a.10 Appeals.

The procedure for appealing any decision regarding the awarding of funds under this part shall be made in accordance with 25 CFR, Part 2, Appeals from administrative action.

PART 113—ALASKA NATIVE FUND

Sec.
113.1 Scope and purpose.
113.2 Definitions.
113.3 Payment of shares in the Fund in the absence of recognition of an assignment.
113.4 Recognition of assignments.
113.5 Register of recognized assignments.
113.6 Sub-assignment.
113.7 Multiple assignments.
113.8 Disclaimer.
113.9 Cancellation of assignments.
113.10 Decision; finality.

AUTHORITY: Sec. 25 and 31, Pub. L. 92-203, 85 Stat. 715, as amended by Pub. L. 95-178, 91 Stat. 1370 (43 U.S.C. 1624, 1628).

SOURCE: 43 FR 20003, May 10, 1978, unless otherwise noted.

§ 113.1 Scope and purpose.

(a) The regulations in this part shall apply to all future distributions of the Alaska Native Fund pursuant to section 6 of the Alaska Native Claims Settlement Act (43 U.S.C. 1605), except money reserved for the payment of attorney and other fees as provided in section 20 of the Act (43 U.S.C. 1619).

(b) These regulations are not intended (1) to alter the distribution formula of section 6 of the Act (43 U.S.C. 1605), or the redistribution formulas of sections 7(j) or 7(m) of the Act (43 U.S.C. 1606(j), (m)); or (2) to require the distribution of money in the Fund when not authorized by the Act, or when the money has been set aside in an escrow or reserved account pursuant to an order of a court of competent jurisdiction.

(c) The regulations in this part are intended to implement section 31 of the Act (43 U.S.C. 1628) which authorizes the Secretary to recognize validly executed assignments of a Regional Corporation's rights to receive payments from the Fund.

§ 113.2 Definitions.

As used in the regulations in this part.

Act means the Alaska Native claims Settlement Act, as amended (Pub. L. 92-203, 85 Stat. 715, 43 U.S.C. 1601 et seq.; Pub. L. 95-178, 91 Stat. 1370).

Assignee means the person or entity receiving from a Regional Corporation an assignment of certain of the corporation's future interests in the Fund.

Assignor means a Regional Corporation which has assigned to another certain of its future interests in the Fund.

Assistant Secretary means the Assistant Secretary for Indian Affairs, U.S. Department of the Interior, or his authorized representative.

Fund means the Alaska Native Fund created by section 6 of the Act (43 U.S.C. 1605).

Payee means the recipient of a distribution from the Fund. The payee must be a financial corporation such as a bank, credit union, or savings and loan association which is insured under the Federal Deposit Insurance Corporation, the National Credit Union Administration, or the Federal Savings and Loan Insurance Corporation, respectively. The payee must be capable of receiving payment through the United States Treasury's Financial Communication System.

Regional Corporation means an Alaska Native Regional Corporation established under the laws of the State of Alaska in accordance with the provisions of the Act.

Secretary means the Secretary of the Interior.

§ 113.3 Payment of shares of the Fund in the absence of recognition of an assignment.

(a) All money in the Fund shall be distributed by the Assistant Secretary at the end of each three months of the fiscal year among the Regional Corporations on the basis of the relative numbers of Natives enrolled in each region.

(b) Except as otherwise authorized in the regulations in this part, a Regional Corporation's quarterly share of the Fund shall be made payable to the Regional Corporation through a payee designated by the Regional Corporation.

(c) A Regional Corporation may designate a payee of its quarterly share at any time, and may change that designation at any time, *provided that* the Assistant Secretary receive written notification of any such designation or change in designation at least ten (10) days before the quarterly distribution date. Any such designation must include the name and address of the payee and the identifying American Banking Association number.

§ 113.4 Recognition of assignments.

(a) Upon application of a Regional Corporation, as provided in paragraph (c) of this section, the Assistant Secretary shall recognize a validly executed assignment of that portion of a furture interest in the Fund not subject to the redistribution provisions of sections 7(j) and 7(m) of the Act. A future interest which is not subject to those redistribution provisions shall be referred to in this section as an "assignable future interest" or the "assignable portion of a quarterly distribution."

(b) Such assignments shall only be recognized to the extent that the Regional Corporation involved is not required to distribute funds pursuant to subsections (j) or (m) of section 7 of the Act.

(c) Upon recognition of such an assignment, the Assistant Secretary shall distribute the amount assigned to the payee designated by the parties to the assignment, and shall continue to pay the amount assigned to that payee, except as provided by §§ 113.6(b) and 113.9.

(d) A Regional Corporation's application for recognition of an assignment of a future interest in the Fund (1) shall be addressed to the Assistant Secretary for Indian Affairs, Attn.: Assistant Director, Financial Management, Bureau of Indian Affairs, U.S. Department of the Interior, Washington, D.C. 20240; (2) shall specifically request that the Assistant Secretary recognize an assignment of a fixed sum to which the Regional Corporation may be entitled from the Fund; (3) shall designate a payee of the amount assigned; (4) shall be accompanied by a duly-adopted resolution of the Board of Directors of the Regional Corporation, which resolution authorizes the making of the assignment and the application for recognition of that assignment by the Secretary of the Interior, or evidence of stockholder approval when required by Alaska state law; and (5) shall be accompanied by one executed copy and three facsimile copies of a validly executed assignment of all or a portion of the Regional Corporation's assignable future interest in the Fund, which assignment shall contain the following language:

(i) The parties to this assignment agree to seek recognition of this assignment by the Secretary of the Interior, as authorized by section 4 of the Act of November 15, 1977, Pub. L. 95-178 (91 Stat. 1369, 1370).

(ii) It is understood by the parties to this assignment that in the event the Secretary of the Interior recognizes this assignment, the United States reserves the right to assert against the assignee and successors of the assignee, any setoff or counterclaim which the United States has, or may have, against the Assignor Corporation.

(e)(1) An assignment may provide that: (i) All of the assignable portion of each quarterly distribution be paid to the payee designated in the application for recognition of assignment;

(ii) A fraction of the assignable portion of each quarterly distribution be paid to the designated payee; or that

(iii) The assignable portion of each quarterly distribution, up to a stated maximum amount, be paid to the designated payee.

(2) Other formulas for assignment of assignable future interests may be recognized if (i) such a formula clearly identifies what portion of each affected quarterly distribution is to be paid

to the designated payee, and (ii) the formula will permit the Assistant Secretary to set priorities in accordance with § 113.7 when subsequent application is made for recognition of additional assignments.

§ 113.5 Register of recognized assignments.

The Assistant Secretary shall maintain and make available for inspection by the public a register of requests for recognition of assignments and assignments recognized by him pursuant to the regulations in this part. Such register shall list the name of the Regional Corporation; the name and address of the assignee; the name, address, American Banking Association number, and account number for deposit of the payee of the amount assigned; the amount assigned; the amount paid at each quarterly distribution under the terms of the assignment; and the date of the Assistant Secretary's recognition.

§ 113.6 Sub-assignment.

(a) Nothing in the regulations in this part shall prohibit an assignee from making a valid sub-assignment of a Regional Corporation's rights to receive payments from the Fund. However, the Assistant Secretary has no authority and shall not recognize any sub-assignment by the assignee of any future interest of a Regional Corporation in the Fund.

(b) The Assistant Secretary may accept a re-designation of a new payee of an assignment recognized by the Assistant Secretary, upon application of an authorized official of the assignee in accordance with § 113.3(c).

§ 113.7 Multiple assignments.

(a) The Assistant Secretary may recognize more than one assignment of a Regional Corporation's future interests in the Fund. A second or later assignment of a Regional Corporation's future interest in the Fund, when recognized in accordance with § 113.4, shall be recognized subject to assignments already recognized.

(b) The Assistant Secretary shall not recognize an assignment of a Regional Corporation's future interest in the Fund if he has more than one outstanding application from that Corporation seeking recognition of such future interests. If more than one application from a Regional Corporation is pending before the Assistant Secretary, he shall notify both the Regional Corporation and the assignees of the assignments sought to be recognized, and seek a written consensus on the priorities to be established. In the Absence of such a consensus, the Assistant Secretary shall not recognize any such assignment.

§ 113.8 Disclaimer.

The Assistant Secretary does not guarantee by any action taken pursuant to the regulations in this part that the entitlement of a Regional Corporation to any quarterly distribution of the Fund shall be of any given amount, or that the cumulative entitlement of that Corporation will reach any given sum.

§ 113.9 Cancellation of assignments.

(a) The Assistant Secretary shall cancel his recognition of an assignment upon joint application of the assignee and Regional Corporation involved. Such application must include a resolution of the Board of Directors of the Regional Corporation, and a validly executed agreement between the Regional Corporation and assignee cancelling the assignment and authorizing the Secretary of the Interior to cancel his recognition of the assignment.

(b) Such cancellation of recognition of an assignment shall be reflected in the register compiled by the Assistant Secretary as provided in § 113.5.

§ 113.10 Decision; finality.

(a) A decision of the Assistant Secretary not to recognize an assignment of a future interest in the Fund shall inform the Regional Corporation what defects, if any, remain in its application for recognition, and shall provide the corporation with an opportunity to cure those defects.

(b) A decision of the Assistant Secretary to recognize an assignment of a Regional Corporation's future interest in the Fund shall not be subject to reconsideration or administrative appeal, and shall therefore be final for the Department.

PART 114—PROCEDURES FOR DEPOSITING FUNDS TO THE CREDIT OF 14X6140-DEPOSITS OF PROCEEDS OF LANDS WITHDRAWN FOR NATIVE SELECTION, BIA

Sec.
114.1 Purpose.
114.2 Proceeds received by Federal agencies.
114.3 Proceeds received by the State of Alaska.

AUTHORITY: 89 Stat. 1145.

SOURCE: 42 FR 32229, June 24, 1977, unless otherwise noted.

§ 114.1 Purpose.

The purpose of the regulations in this part is to describe the procedures to be used by all Departments and Agencies of the Federal Government and the State of Alaska for the deposit of proceeds derived from contracts, leases, permits, and rights-of-way or easements pertaining to affected lands or resources in affected lands withdrawn for Native selection pursuant to the Alaska Native Claims Settlement Act.

§ 114.2 Proceeds received by Federal agencies.

(a) Direct Deposits.

(1) Agency will prepare Deposit Ticket (SF 215), using Agency Accounting Station Code 14-20-0650.

(2) In Block (6) Fund Symbol 14X6140 will be inserted as well as the following:

Credit to Bureau of Indian Affairs, Branch of Finance and Accounting, P.O. Box 127, Albuquerque, New Mexico 87103.

(3) Memorandum copy and confirmed copy of Deposit Ticket will be mailed to above address, immediately upon completion and confirmation.

(4) Agency will provide information (lease, contract or other identification) which will permit depositing agency to identify deposit with particular plot of land at time distribution of the funds is to be made. This information can be shown in Block (6) if space permits, or on an attached listing.

(b) Periodic Deposits.

(1) In some circumstances, collection from Withdrawn Lands will be in such small amounts and such frequency as to be administratively burdensome to make individual deposits to the fund, or collections may be mixed with collections to be credited to other funds. In such instances depositing agencies may initially deposit the collections to their own suspense accounts. Such deposits will then be transferred to Fund 14X6140 no less frequently than monthly. The "Pay to" side of the SF 1081 will be completed as follows:

Department, Interior.
Bureau, Indian Affairs.
Agency Station Symbol, 14-20-0650.
Address, Albuquerque, NM 87103.
Appropriation or Fund Symbol, 14X6140.

and will be supported by sufficient detail to permit future identification by depositing agency. An advance copy of the SF 1081, with supporting documentation will be forwarded to the BIA at Albuquerque immediately.

(2) Agencies not using the SF 1081 procedures will issue a check made payable to the Treasurer of the United States, and forward it to:

Juneau Area Office, Bureau of Indian Affairs, P.O. Box 8000—B, Juneau, Alaska 99802.

accompanied by a listing in sufficient detail to permit the collecting agency to identify the collections with each parcel of land at the time distribution of the funds is to be made.

§ 114.3 Proceeds received by the State of Alaska.

The State agency responsible for making collections will deposit the proceeds to the credit of the State of Alaska. A check will then be issued, payable to the Treasurer of the United States, and will be forwarded to the Juneau Area Office, Bureau of Indian Affairs, accompanied by a detailed listing providing information which will permit identification of the funds with each particular parcel of land at the time distribution of the funds is to be made. The Juneau Area Office will deposit all such receipts to the credit of

Fund Symbol 14X6140, forwarding the memorandum copy to the Branch of Finance and Accounting immediately, together with a copy of the detail provided by the State of Alaska.

SUBCHAPTER K—PATENTS, ALLOTMENTS AND SALES

PART 120—LAND RECORDS AND TITLE DOCUMENTS

§ 120.1 Maintenance of land records and title documents.

The office(s) for the maintenance of records of the Department for trust or restricted Indian lands shall be the title plants that have been or may be established by the Bureau of Indian Affairs to serve its respective area offices as recording offices. At the time such a title plant is ready to undertake the maintenance of such records as to any trust or restricted Indian-owned lands under the jurisdiction of a particular area office, the Secretary of the Interior shall cause to be transferred from Washington, or from the area office previously having the custody of the official records to such title plant all the records and title documents pertaining to such lands. Upon such transfer of records to the appropriate title plant, the Secretary of the Interior shall have a notice published in the FEDERAL REGISTER of such action setting forth the effective date thereof. Thereafter, the custody and maintenance of land records and title documents as to such lands will rest with the title plant. Also, after such transfer, all documents which affect the title to trust or restricted lands for which the records have been so transferred shall be submitted to such title plant for recording. Nothing in this section shall prevent the consolidation of any title plants that have or may be established and the further transfer of records to such consolidated plant(s). The requirement of publication of notice shall apply further transfer.

(5 U.S.C. 301)

[30 FR 11676, Sept. 11, 1965]

PART 121—ISSUANCE OF PATENTS IN FEE, CERTIFICATES OF COMPETENCY, REMOVAL OF RESTRICTIONS, AND SALE OF CERTAIN INDIAN LANDS

Sec.

121.1 Definitions.
121.2 Withholding action on application.

ISSUING PATENTS IN FEE, CERTIFICATES OF COMPETENCY OR ORDERS REMOVING RESTRICTIONS

Sec.

121.3 Information regarding status of applications for removal of Federal supervision over Indian lands.
121.4 Application for patent in fee.
121.5 Issuance of patent in fee.
121.6 Issuance of patents in fee to non-Indians and Indians with whom a special relationship does not exist.
121.7 Application for certificate of competency.
121.8 Issuance of certificate of competency.
121.9 Certificates of competency to certain Osage adults.
121.10 Application for orders removing restrictions, except Five Civilized Tribes.
121.11 Issuance of orders removing restrictions, except Five Civilized Tribes.
121.12 Removal of restrictions, Five Civilized Tribes, after application under authority other than section 2(a) of the Act of August 11, 1955.
121.13 Removal of restrictions, Five Civilized Tribes, after application under section 2(a) of the Act of August 11, 1955.
121.14 Removal of restrictions, Five Civilized Tribes, without application.
121.15 Judicial review of removal of restrictions, Five Civilized Tribes, without application.
121.16 Effect of order removing restrictions, Five Civilized Tribes.

SALES, EXCHANGES AND CONVEYANCES OF TRUST OR RESTRICTED LANDS

121.17 Sales, exchanges, and conveyances by, or with the consent of the individual Indian owner.
121.18 Sale with the consent of natural guardian or person designated by the Secretary.
121.19 Sale by fiduciaries.
121.20 Sale by Secretary of certain land in multiple ownership.
121.21 Sale or exchange of tribal land.
121.22 Secretarial approval necessary to convey individual-owned trust or restricted lands or land owned by a tribe.
121.23 Applications for sale, exchange or gift.
121.24 Appraisal.
121.25 Negotiated sales, gifts and exchanges of trust or restricted lands.
121.26 Advertisement.
121.27 Procedure of sale.
121.28 Action at close of bidding.

Sec.
121.29 Rejection of bids; disapproval of sale.
121.30 Bidding by employees.
121.31 Cost of conveyance; payment.
121.32 Irrigation fee; payment.

PARTITIONS IN KIND OF INHERITED ALLOTMENTS

121.33 Partition.

MORTGAGES AND DEEDS OF TRUST TO SECURE LOANS TO INDIANS

121.34 Approval of mortgage and deeds of trust.
121.35 Deferred payment sales.

AUTHORITY: R.S. 161; 5 U.S.C. 301. Interpret or apply sec. 7, 32 Stat. 275, 34 Stat. 1018, sec. 1, 35 Stat. 444, sec. 1 and 2, 36 Stat. 855, as amended, 856, as amended, sec. 17, 39 Stat. 127, 40 Stat. 579, 62 Stat. 236, sec. 2, 40 Stat. 606, 68 Stat. 358, 69 Stat. 666: 25 U.S.C. 378, 379, 405, 404, 372, 373, 483, 355, unless otherwise noted.

SOURCE: 38 FR 10080, Apr. 24, 1973, unless otherwise noted.

CROSS REFERENCES: For further regulations pertaining to the sale of irrigable lands, see Parts 129, 128 and § 211.4 of this chapter. For Indian money regulations, see Parts 104, 101, 107, 105, and 102 of this chapter. For regulations pertaining to the determination of heirs and approval of wills, see Part 15 and §§ 11.30-11.32C of this chapter.

§ 121.1 Definitions.

As used in this part:

(a) "Secretary" means the Secretary of the Interior or his authorized representative acting under delegated authority.

(b) "Agency" means an Indian agency or other field unit of the Bureau of Indian Affairs having trust or restricted Indian land under its immediate jurisdiction.

(c) "Restricted land" means land or any interest therein, the title to which is held by an individual Indian, subject to Federal restrictions against alienation or encumbrance.

(d) "Trust land" means land or any interest therein held in trust by the United States for an individual Indian.

(e) "Competent" means the possession of sufficient ability, knowledge, experience, and judgment to enable an individual to manage his business affairs, including the administration, use, investment, and disposition of any property turned over to him and the income or proceeds therefrom, with such reasonable degree of prudence and wisdom as will be apt to prevent him from losing such property or the benefits thereof. (Act of August 11, 1955 (69 Stat. 666).)

(f) "Tribe" means a tribe, band, nation, community, group, or pueblo of Indians.

§ 121.2 Withholding action on application.

Action on any application, which if approved would remove Indian land from restricted or trust status, may be withheld, if the Secretary determines that such removal would adversely affect the best interest of other Indians, or the tribes, until the other Indians or the tribes so affected have had a reasonable opportunity to acquire the land from the applicant. If action on the application is to be withheld, the applicant shall be advised that he has the right to appeal the withholding action pursuant to the provisions of Part 2 of this chapter.

ISSUING PATENTS IN FEE, CERTIFICATES OF COMPETENCY OR ORDERS REMOVING RESTRICTIONS

§ 121.3 Information regarding status of applications for removal of Federal supervision over Indian lands.

The status of applications by Indians for patents in fee, certificates of competency, or orders removing restrictions shall be disclosed to employees of the Department of the Interior whose duties require that such information be disclosed to them; to the applicant or his attorney, upon request; and to Members of Congress who inquire on behalf of the applicant. Such information will be available to all other persons, upon request, 15 days after the fee patent has been issued by the Bureau of Land Management, or 15 days after issuance of certificate of competency or order removing restrictions, or after the application has been rejected and the applicant notified. Where the termination of the trust or restricted status of the land covered by the application would adversely affect the protection and use of Indian land remaining in trust or restricted status, the owners of the land that

would be so affected may be informed that the application has been filed.

§ 121.4 Application for patent in fee.

Any Indian 21 years of age or over may apply for a patent in fee for his trust land. A written application shall be made in the form approved by the Secretary and shall be completed and filed with the agency having immediate jurisdiction over the land.

§ 121.5 Issuance of patent in fee.

(a) An application may be approved and fee patent issued if the Secretary, in his discretion, determines that the applicant is competent. When the patent in fee is delivered, an inventory of the estate covered thereby shall be given to the patentee. (Acts of Feb. 8, 1887 (24 Stat. 388), as amended (25 U.S.C. 349); June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372); and May 14, 1948 (62 Stat. 236; 25 U.S.C. 483), and other authorizing acts.)

(b) If an application is denied, the applicant shall be notified in writing, given the reasons therefor and advised of his right to appeal pursuant to the provisions of Part 2 of this chapter.

(c) White Earth Reservation: The Secretary will, pursuant to the Act of March 1, 1907 (34 Stat. 1015), issue a patent in fee to any adult mixed-blood Indian owning land within the White Earth Reservation in the State of Minnesota upon application from such Indian, and without consideration as to whether the applicant is competent.

(d) Fort Peck Reservation: Pursuant to the Act of June 30, 1954 (68 Stat. 358), oil and gas underlying certain allotments in the Fort Peck Reservation were granted to certain Indians to be held in trust for such Indians and provisions was made for issuance of patents in fee for such oil and gas or patents in fee for land in certain circumstances.

(1) Where an Indian or Indians were the grantees of the entire interest in the oil and gas underlying a parcel of land, and such Indian or Indians had before June 30, 1954, been issued a patent or patents in fee for any land within the Fort Peck Reservation, the title to the oil and gas was conveyed by the act in fee simple status.

(2) Where the entire interest in the oil and gas granted by the act is after June 30, 1954, held in trust for Indians to whom a fee patent has been issued at any time, for any land within the Fort Peck Reservation, or who have been or are determined by the Secretary to be competent, the Secretary will convey, by patent, without application, therefor, unrestricted fee simple title to the oil and gas.

(3) Where the Secretary determines that the entire interest in a tract of land on the Fort Peck Reservation is owned by Indians who were grantees of oil and gas under the act and he determines that such Indians are competent, he will issue fee patents to them covering all interests in the land without application.

§ 121.6 Issuance of patents in fee to non-Indians and Indians with whom a special relationship does not exist.

Whenever the Secretary determines that trust land, or any interest therein, has been acquired through inheritance or devise by a non-Indian, or by a person of Indian descent to whom the United States owes no trust responsibility, the Secretary may issue a patent in fee for the land or interest therein to such person without application.

§ 121.7 Application for certificate of competency.

Any Indian 21 years old or over, except certain adult members of the Osage Tribe as provided in § 121.9, who holds land or an interest therein under a restricted fee patent may apply for a certificate of competency. The written application shall be made in the form approved by the Secretary and filed with the agency having immediate jurisdiction over the land.

§ 121.8 Issuance of certificate of competency.

(a) An application may be approved and a certificate of competency issued if the Secretary, in his discretion, determines that the applicant is competent. The delivery of the certificate shall have the effect of removing the restrictions from the land described therein. (Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372).)

(b) If the application is denied, the applicant shall be notified in writing, given the reasons therefor and advised of his right to appeal pursuant to the provisions of Part 2 of this chapter.

§ 121.9 Certificates of competency to certain Osage adults.

Applications for certificates of competency by adult members of the Osage Tribe of one-half or more Indian blood shall be in the form approved by the Secretary. Upon the finding by the Secretary that an applicant is competent, a certificate of competency may be issued removing restrictions against alienation of all restricted property and terminating the trust on all restricted property, except Osage headright interests, of the applicant.

CROSS-REFERENCES: For regulations pertaining to the issuance of certificates of competency to adult Osage Indians of less than one-half Indian blood, see Part 123 of this chapter.

§ 121.10 Application for orders removing restrictions, except Five Civilized Tribes.

Any Indian not under legal disability under the laws of the State where he resides or where the land is located, or the court-appointed guardian or conservator of any Indian, may apply for an order removing restrictions from his restricted land or the restricted land of his ward. The application shall be in writing setting forth reasons for removal of restrictions and filed with the agency having immediate jurisdiction over the lands.

§ 121.11 Issuance of orders removing restrictions, except Five Civilized Tribes.

(a) An application for an order removing restrictions may be approved and such order issued by the Secretary, in his discretion, if he determines that the applicant is competent or that removal of restrictions is in the best interests of the Indian owner. The effect of the order will be to remove the restrictions from the land described therein.

(b) If the application is denied, the applicant will be notified in writing, given the reasons therefor and advised of his right to appeal pursuant to the provisions of Part 2 of this chapter.

§ 121.12 Removal of restrictions, Five Civilized Tribes, after application under authority other than section 2(a) of the Act of August 11, 1955.

When an Indian of the Five Civilized Tribes makes application for removal of restrictions from his restricted lands under authority other than section 2(a) of the Act of August 11, 1955 (69 Stat. 666), such application may be for either unconditional removal of restrictions or conditional removal of restrictions, but shall not include lands or interest in lands acquired by inheritance or devise.

(a) If the application is for unconditional removal of restrictions and the Secretary, in his discretion, determines the applicant should have the unrestricted control of that land described in his application, the Secretary may issue an order removing restrictions therefrom.

(b) When the Secretary, in his discretion, finds that in the best interest of the applicant all or part of the land described in the application should be sold with conditions concerning terms of sale and disposal of the proceeds, the Secretary may issue a conditional order removing restrictions which shall be effective only and simultaneously with the execution of a deed by said applicant upon completion of an advertised sale or negotiated sale acceptable to the Secretary.

§ 121.13 Removal of restrictions, Five Civilized Tribes, after application under section 2(a) of the Act of August 11, 1955.

When an Indian of the Five Civilized Tribes makes application for removal of restrictions under authority of section 2(a) of the Act of August 11, 1955 (69 Stat. 666), the Secretary will determine the competency of the applicant.

(a) If the Secretary determines the applicant to be competent, he shall issue an order removing restrictions having the effect stated in § 121.16.

(b) If the Secretary rejects the application, his action is not subject to administrative appeal, notwithstanding the provisions concerning appeals in Part 2 of this chapter.

(c) If the Secretary rejects the application, or neither rejects nor approves the application within 90 days of the application date, the applicant may apply to the State district court in the county in which he resides for an order removing restrictions. If that State district court issues such order, it will have the effect stated in § 121.16.

§ 121.14 Removal of restrictions, Five Civilized Tribes, without application.

Section 2(b) of the Act of August 11, 1955 (69 Stat. 666), authorizes the Secretary to issue an order removing restrictions to an Indian of the Five Civilized Tribes without application therefor. When the Secretary determines an Indian to be competent, he shall notify the Indian in writing of his intent to issue an order removing restrictions 30 days after the date of the notice. This decision may be appealed under the provisions of Part 2 of this chapter within such 30 days. All administrative appeals under that part will postpone the issuance of the order. When the decision is not appealed within 30 days after the date of notice, or when any dismissal of an appeal is not appealed within the prescribed time limit, or when the final appeal is dismissed, an order removing restrictions will be issued.

§ 121.15 Judicial review of removal of restrictions, Five Civilized Tribes, without application.

When an order removing restrictions is issued, pursuant to § 121.14, a copy of such order will be delivered to the Indian, to any person acting in his behalf, and to the Board of County Commissioners for the county in which the Indian resides. At the time the order is delivered written notice will be given the parties that under the terms of the Act of August 11, 1955 (69 Stat. 666), the Indian or the Board of County Commissioners has, within 6 months of the date of notification, the right to appeal to the State district court for the district in which the Indian resides for an order setting aside the order removing restrictions. The timely initiation of proceedings in the State district court will stay the effective date of the order removing restrictions until such proceedings are concluded. If the State district court dismisses the appeal, the order removing restrictions will become effective 6 months after notification to the parties of such dismissal. The effect of the issuance of such order will be as prescribed in § 121.16.

§ 121.16 Effect of order removing restrictions, Five Civilized Tribes.

An order removing restrictions issued pursuant to the Act of August 11, 1955 (69 Stat. 666), on its effective date shall serve to remove all jurisdiction and supervision of the Bureau of Indian Affairs over money and property held by the United States in trust for the individual Indian or held subject to restrictions against alienation imposed by the United States. The Secretary shall cause to be turned over to the Indian full ownership and control of such money and property and issue in the case of land such title document as may be appropriate: *Provided*, That the Secretary may make such provisions as he deems necessary to insure payment of money loaned to any such Indian by the Federal Government or by an Ind[illegible]n tribe; *And provided further*, That the interest of any lessee or permittee in any lease, contract, or permit that is outstanding when an order removing restrictions becomes effective shall be preserved as provided in section 2(d) of the Act of August 11, 1955 (69 Stat. 666).

Sales, Exchanges And Conveyances Of Trust Or Restricted Lands

§ 121.17 Sales, exchanges and conveyances by, or with the consent of the individual Indian owner.

Pursuant to the Acts of May 27, 1902 (32 Stat. 275; 25 U.S.C. 379); May 17, 1906 (34 Stat. 197), as amended August 2, 1956 (70 Stat. 954; 48 U.S.C. 357); March 1, 1907 (34 Stat. 1018; 25 U.S.C. 405); May 29, 1908 (35 Stat. 444; 25 U.S.C. 404); June 25, 1910 (36 Stat. 855; 25 U.S.C. 372), as amended May 25, 1926 (44 Stat. 629; 48 U.S.C. 355a-355d); June 18, 1934 (48 Stat. 984; 25 U.S.C. 464); and May 14, 1948 (62 Stat. 236; 25 U.S.C. 483); and pursuant to other authorizing acts, trust or restricted lands acquired by allotment,

devise, inheritance, purchase, exchange, or gift may be sold, exchanged, and conveyed by the Indian owner with the approval of the Secretary or by the Secretary with the consent of the Indian owner.

§ 121.18 Sale with the consent of natural guardian or person designated by the Secretary.

Pursuant to the Act of May 29, 1908 (35 Stat. 444; 25 U.S.C. 404), the Secretary may, with the consent of the natural guardian of a minor, sell trust or restricted land belonging to such minor; and the Secretary may, with the consent of a person designated by him, sell trust or restricted land belonging to Indians who are minor orphans without a natural guardian, and Indians who are non compos mentis or otherwise under legal disability. The authority contained in this act is not applicable to lands in Oklahoma, Minnesota, and South Dakota, nor to lands authorized to be sold by the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483).

§ 121.19 Sale by fiduciaries.

Guardians, conservators, or other fiduciaries appointed by State courts, or by tribal courts operating under approved constitutions or law and order codes, may, upon order of the court, convey with the approval of the Secretary or consent to the conveyance by the Secretary of trust or restricted land belonging to their Indian wards who are minors, non compos mentis or otherwise under legal disability. This section is subject to the exceptions contained in 25 U.S.C. § 954(b).

§ 121.20 Sale by Secretary of certain land in multiple ownership.

Pursuant to the Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372), if the Secretary decides that one or more of the heirs who have inherited trust land are incapable of managing their own affairs, he may sell any or all interests in that land. This authority is not applicable to lands authorized to be sold by the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483).

§ 121.21 Sale or exchange of tribal land.

Certain tribal land may be sold or exchanged pursuant to the Acts of February 14, 1920 (41 Stat. 415; 25 U.S.C. 294); June 18, 1934 (48 Stat. 984; 25 U.S.C. 464); August 10, 1939 (53 Stat. 1351; 25 U.S.C. 463(e)); July 1, 1948 (62 Stat. 1214); June 4, 1953 (67 Stat. 41; 25 U.S.C. 293(a)); July 28, 1955 (69 Stat. 392), as amended August 31, 1964 (78 Stat. 747; 25 U.S.C. 608-608c); June 18, 1956 (70 Stat. 290; 25 U.S.C. 403a-2); July 24, 1956 (70 Stat. 626); May 19, 1958 (72 Stat. 121; 25 U.S.C. 463, Note); September 2, 1958 (72 Stat. 1762); April 4, 1960 (74 Stat. 13); April 29, 1960 (74 Stat. 85); December 11, 1963 (77 Stat. 349); August 11, 1964 (78 Stat. 389), and pursuant to other authorizing acts. Except as otherwise provided by law, and as far as practicable, the regulations in this Part 121 shall be applicable to sale or exchanges of such tribal land.

§ 121.22 Secretarial approval necessary to convey individual-owned trust or restricted lands or land owned by a tribe.

(a) *Individual lands.* Trust or restricted lands, except inherited lands of the Five Civilized Tribes, or any interest therein, may not be conveyed without the approval of the Secretary. Moreover, inducing an Indian to execute an instrument purporting to convey any trust land or interest therein, or the offering of any such instrument for record, is prohibited and criminal penalties may be incurred. (See 25 U.S.C. 202 and 348.)

(b) *Tribal lands.* Lands held in trust by the United States for an Indian tribe, lands owned by a tribe with Federal restrictions against alienation and any other land owned by an Indian tribe may only be conveyed where specific statutory authority exists and then only with the approval of the Secretary unless the Act of Congress authorizing sale provides that approval is unnecessary. (See 25 U.S.C. 177.)

§ 121.23 Applications for sale, exchange or gift.

Applications for the sale, exchange or gift of trust or restricted land shall be filed in the form approved by the Secretary with the agency having immediate jurisdiction over the land. Ap-

plications may be approved if, after careful examination of the circumstances in each case, the transaction appears to be clearly justified in the light of the long-range best interest of the owner or owners or as under conditions set out in § 121.25(d).

§ 121.24 Appraisal.

Except as otherwise provided by the Secretary, an appraisal shall be made indicating the fair market value prior to making or approving a sale, exchange, or other transfer of title of trust or restricted land.

§ 121.25 Negotiated sales, gifts and exchanges of trust or restricted lands.

Those sales, exchanges, and gifts of trust or restricted lands specifically described in the following paragraphs (a), (b), (c), and (d) of this section may be negotiated; all other sales shall be by advertised sale, except as may be otherwise provided by the Secretary.

(a) *Consideration not less than the appraised fair market value.* Indian owners may, with the approval of the Secretary, negotiate a sale of and sell trust or restricted land for not less than the appraised fair market value: (1) When the sale is to the United States, States, or political subdivisions thereof, or such other sale as may be for a public purpose; (2) when the sale is to the tribe or another Indian; or (3) when the Secretary determines it is impractical to advertise.

(b) *Exchange at appraised fair market value.* With the approval of the Secretary, Indian owners may exchange trust or restricted land, or a combination of such land and other things of value, for other lands or combinations of land and other things of value. The value of the consideration received by the Indian in the exchange must be at least substantially equal to the appraised fair market value of the consideration given by him.

(c) *Sale to coowners.* With the approval of the Secretary, Indian owners may negotiate a sale of and sell trust or restricted land to a coowner of that land. The consideration may be less than the appraised fair market value, if in the opinion of the Secretary there is a special relationship between the coowners or special circumstances exist.

(d) *Gifts and conveyances for less than the appraised fair market value.* With the approval of the Secretary, Indian owners may convey trust or restricted land, for less than the appraised fair market value or for no consideration when the prospective grantee is the owner's spouse, brother, sister, lineal ancestor of Indian blood or lineal descendant, or when some other special relationship exists between the grantor and grantee or special circumstances exist that in the opinion of the Secretary warrant the approval of the conveyance.

§ 121.26 Advertisement.

(a) Upon approval of an application for an advertised sale, notice of the sale will be published not less than 30 days prior to the date fixed for the sale unless for good cause a shorter period is authorized by the Secretary.

(b) The notice of sale will include (1) terms, conditions, place, date, hour, and methods of sale, including explanation of auction procedure as set out in § 121.27(b)(2) if applicable; (2) where and how bids shall be submitted; (3) a statement warning all bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders or potential bidders; and (4) description of tracts, all reservations to which title will be subject and any restrictions and encumbrances of record with the Bureau of Indian Affairs and any other information that may improve sale prospects.

§ 121.27 Procedure of sale.

Advertised sales shall be by sealed bids except as otherwise provided herein.

(a) (1) Bids, conforming to the requirements set out in the advertisement of sale, along with a certified check, cashier's check, money order, or U.S. Treasury check, payable to the Bureau of Indian Affairs, for not less than 10 percent of the amount of the bid, must be enclosed in a sealed envelope marked as prescribed in the notice of sale. A cash deposit may be submitted in lieu of the above-specified negotiable instruments at the bid-

der's risk. Tribes submitting bids pursuant to this paragraph may guarantee the required 10 percent deposit by an appropriate resolution; (2) the sealed envelopes containing the bids will be publicly opened at the time fixed for sale. The bids will be announced and will be appropriately recorded.

(b) The policy of the Secretary recognizes that in many instances a tribe or a member thereof has a valid interest in acquiring trust or restricted lands offered for sale.

(1) With the consent of the owner and when the notice of sale so states, the tribe or members of such tribe shall have the right to meet the high bid.

(2) Provided the tribe is not the high bidder and when one or more acceptable sealed bids are received and when so stated in the notice of sale, an oral auction may be held following the bid opening. Bidding in the auction will be limited to the tribe, and to those who submitted sealed bids at 75 percent or more of the appraised value of the land being auctioned. At the conclusion of the auction the highest bidder must increase his deposit to not less than 10 percent of his auction bid.

§ 121.28 Action at close of bidding.

(a) The officer in charge of the sale shall publicly announce the apparent highest acceptable bid. The deposits submitted by the unsuccessful bidders shall be returned immediately. The deposit submitted by the apparent successful bidder shall be held in a special account.

(b) If the highest bid received at an advertised sale is less than the appraised fair market value of the land, the Secretary with the consent of the owner may accept that bid if the amount bid approximates said appraised fair market value and in the Secretary's judgment is the highest price that may be realized in the circumstances.

(c) The Secretary shall award the bid and notify the apparent successful bidder that the remainder of the purchase price must be submitted within 30 days.

(1) Upon a showing of cause the Secretary may, in his discretion, extend the time of payment of the balance due.

(2) If the remainder of the purchase price is not paid within the time allowed, the bid will be rejected and the apparent successful bidder's 10 percent deposit will be forfeited to the landowner's use.

(d) The issuance of the patent or delivery of a deed to the purchaser will not be authorized until the balance of the purchase price has been paid, except that the fee patent may be ordered in cases where the purchaser is obtaining a loan from an agency of the Federal Government and such agency has given the Secretary a commitment that the balance of the purchase price will be paid when the fee patent is issued.

§ 121.29 Rejection of bids; disapproval of sale.

The Secretary reserves the right to reject any and all bids before the award, after the award, or at any time prior to the issuance of a patent or delivery of a deed, when he shall have determined such rejection to be in the best interests of the Indian owner.

§ 121.30 Bidding by employees.

Except as authorized by the provisions of Part 251 of this chapter, no person employed in Indian Affairs shall directly or indirectly bid, make, or prepare any bid, or assist any bidder in preparing his bid. Sales between Indians, either of whom is an employee of the U.S. Government, are governed by the provisions of Part 251 of this chapter (see 25 U.S.C. 68 and 441).

§ 121.31 Cost of conveyance; payment.

Pursuant to the Act of February 14, 1920 (41 Stat. 415), as amended by the Act of March 1, 1933 (47 Stat. 1417; 25 U.S.C. 413), the Secretary may in his discretion collect from a purchaser reasonable fees for work performed or expense incurred in the transaction. The amount so collected shall be deposited to the credit of the United States as general fund receipts, except as stated in paragraph (b) of this section.

(a) (1) The amount of the fee shall be $22.50 for each transaction.

(2) The fee may be reduced to a lesser amount or may be waived, if the Secretary determines circumstances justify such action.

(b) (1) If any or all of the costs of the work performed or expenses incurred are paid with tribal funds, an alternate schedule of fees may be established, subject to approval of the Secretary, and that part of such fees deemed appropriate may be credited to the tribe.

(2) When the purchaser is the tribe which bears all or any part of such costs, the collection of the proportionate share from the tribe may be waived.

§ 121.32 Irrigation fee; payment.

Collection of all construction costs against any Indian-owned lands within Indian irrigation projects is deferred as long as Indian title has not been extinguished. (Act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 386a).) This statute is interpreted to apply only where such land is owned by Indians either in trust or restricted status.

(a) When any person whether Indian or non-Indian acquires Indian lands in a fee simple status that are part of an Indian irrigation project he must enter into an agreement, (1) to pay the pro rata share of the construction of the project chargeable to the land, (2) to pay all construction costs that accrue in the future, and (3) to pay all future charges assessable to the land which are based on the annual cost of operation and maintenance of the irrigation system.

(b) Any operation and maintenance charges that are delinquent when Indian land is sold will be deducted from the proceeds of sale unless other acceptable arrangements are made to provide for their payment prior to the approval of the sale.

(c) A lien clause covering all unpaid irrigation construction costs, past and future, will be inserted in the patent or other instrument of conveyance issued to all purchasers of restricted or trust lands that are under an Indian irrigation project.

CROSS-REFERENCE: See Part 128 and Part 129 and cross-references thereunder in this chapter for further regulations regarding sale of irrigable lands.

PARTITIONS IN KIND OF INHERITED ALLOTMENTS

§ 121.33 Partition.

(a) *Partition without application.* If the Secretary of the Interior shall find that any inherited trust allotment or allotments (as distinguished from lands held in a restricted fee status or authorized to be sold under the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483)), are capable of partition in kind to the advantage of the heirs, he may cause such lands to be partitioned among them, regardless of their competency, patents in fee to be issued to the competent heirs for their shares and trust patents to be issued to the incompetent heirs for the lands respectively or jointly set apart to them, the trust period to terminate in accordance with the terms of the original patent or order of extension of the trust period set out in said patent. (Act of May 18, 1916 (39 Stat. 127; 25 U.S.C. 378).) The authority contained in the Act of May 18, 1916, is not applicable to lands authorized to be sold by the Act of May 14, 1948, nor to land held in restricted fee status.

(b) *Application for partition.* Heirs of a deceased allottee may make written application, in the form approved by the Secretary, for partition of their trust or restricted land. If the Secretary finds the trust lands susceptible of partition, he may issue new patents or deeds to the heirs for the portions set aside to them. If the allotment is held under a restricted fee title (as distinguished from a trust title), partition may be accomplished by the heirs executing deeds approved by the Secretary, to the other heirs for their respective portions.

MORTGAGES AND DEEDS OF TRUST TO SECURE LOANS TO INDIANS

§ 121.34 Approval of mortgages and deeds of trust.

Any individual Indian owner of trust or restricted lands, may with the approval of the Secretary execute a mortgage or deed of trust to his land. Prior to approval of such mortgage or deed of trust, the Secretary shall secure appraisal information as he deems advisable. Such lands shall be

subject to foreclosure or sale pursuant to the terms of the mortgage or deed of trust in accordance with the laws of the State in which the lands are located. For the purpose of foreclosure or sale proceedings under this section, the Indian owners shall be regarded as vested with unrestricted fee simple title to the lands (Act of March 29, 1956.

(70 Stat. 62; 25 U.S.C. 483a)).

§ 121.35 Deferred payment sales.

When the Indian owner and purchaser desire, a sale may be made or approved on the deferred payment plan. The terms of the sale will be incorporated in a memorandum of sale which shall constitute a contract for delivery of title upon payment in full of the amount of the agreed consideration. The deed executed by the grantor or grantors will be held by the Superintendent and will be delivered only upon full compliance with the terms of sale. If conveyance of title is to be made by fee patent, request therefor will be made only upon full compliance with the terms of the sale. The terms of the sale shall require that the purchaser pay not less than 10 percent of the purchase price in advance as required by the Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372); terms for the payment of the remaining installments plus interest shall be those acceptable to the Secretary and the Indian owner. If the purchaser on any deferred payment plan makes default in the first or subsequent payments, all payments, including interest, previously made will be forfeited to the Indian owner.

PART 122—DETERMINATION OF COMPETENCY: CROW INDIANS

Sec.

122.1 Purpose of regulations.
122.2 Application and examination.
122.3 Application form.
122.4 Factors determining competency.
122.5 Children of competent Indians.
122.6 Appeals.

AUTHORITY: Sec. 12, 41 Stat. 755, 46 Stat. 1495, as amended.

SOURCE: 22 FR 10563, Dec. 24, 1957, unless otherwise noted.

§ 122.1 Purpose of regulations.

The regulations in this part govern the procedures in determining the competency of Crow Indians under Public Law 303, 81st Congress, approved September 8, 1949.

§ 122.2 Application and examination.

The Commissioner of Indian Affairs or his duly authorized representative, upon the application of any unenrolled adult member of the Crow Tribe, shall classify him by placing his name to the competent or incompetent rolls established pursuant to the act of June 4, 1920 (41 Stat. 751), and upon application shall determine whether those persons whose names now or hereafter appear on the incompetent roll shall be reclassified as competent and their names placed on the competent roll.

§ 122.3 Application form.

The application form shall include, among other things: (a) The name of the applicant; (b) his age, residence, degree of Indian blood, and education; (c) his experience in farming, cattle raising, business, or other occupation (including home-making); (d) his present occupation, if any; (e) a statement concerning the applicant's financial status, including his average earned and unearned income for the last two years from restricted leases and from other sources, and his outstanding indebtedness to the United States, to the tribe, or to others; (f) a description of his property and its value, including his allotted and inherited lands; and (g) the name of the applicant's spouse, if any, and the names of his minor children, if any, and their ages, together with a statement regarding the land, allotted and inherited, held by each.

§ 122.4 Factors determining competency.

Among the matters to be considered by the Commissioner of Indian Affairs in determining competency are the amount of the applicant's indebtedness to the tribe, to the United States Government, and to others; whether he is a public charge or a charge on friends and relatives, or will become such a charge, by reason of being classed as competent; and whether the

applicant has demonstrated that he possesses the ability to take care of himself and his property, to protect the interests of himself and his family, to lease his land and collect the rentals therefrom, to lease the land of his minor children, to prescribe in lease agreements those provisions which will protect the land from deterioration through over-grazing and other improper practices, and to assume full responsibility for obtaining compliance with the terms of any lease.

§ 122.5 Children of competent Indians.

Children of competent Indians who have attained or upon attaining their majority shall automatically become competent except any such Indian who is declared incompetent by a court of competent jurisdiction or who is incompetent under the laws of the State within which he resides.

§ 122.6 Appeals.

An appeal to the Secretary of the Interior may be made within 30 days from the date of notice to the applicant of the decision of the Commissioner of Indian Affairs.

PART 123—OSAGE ROLL, CERTIFICATE OF COMPETENCY

Sec.

123.1 Definitions.
123.2 Preparation of competency roll.
123.3 Determination of age and quantum of Indian blood.
123.4 Notification; disagreement and decision.
123.5 Issuance of certificate of competency.
123.6 Costs of recording certificates of competency.
123.7 Delivery of cash and securities.

AUTHORITY: 62 Stat. 18; 25 U.S.C. 331 note.

SOURCE: 22 FR 10563, Dec. 24, 1957, unless otherwise noted.

§ 123.1 Definitions

When used in the regulations in this part the following words or terms shall have the meaning shown below:

(a) "Secretary" means the Secretary of the Interior.

(b) "Commissioner" means the Commissioner of Indian Affairs.

(c) "Superintendent" means the superintendent of the Osage Agency.

(d) "Person" means an unallotted member of the Osage Tribe of less than one-half Indian blood who has not received a certificate of competency.

§ 123.2 Preparation of competency roll.

The superintendent shall cause a roll to be compiled of all persons who have attained the age of 21 years, and shall add thereto the names of minors as they attain the age of 21 years. The roll shall include the names, last known address, date of birth, and the total quantum of Osage blood and non-Osage Indian blood of each person listed thereon.

§ 123.3 Determination of age and quantum of Indian blood.

(a) The date of birth as shown by the census records of the Osage Agency shall be accepted as prima facie evidence in determining the age of a person.

(b) The total quantum of Indian blood of a person shall be computed and determined as follows:

(1) When the parents of a person are enrolled members, or when one parent is an enrolled member and the other parent is a descendant of an enrolled member, or when both parents are descendants of enrolled members, or when one parent is an enrolled member of descendant of an enrolled member of the Osage Tribe, and the other parent is of non-Indian blood, the Osage Agency register of Indian families for the year ending December 31, 1901, shall be accepted as prima facie evidence of the quantum of Indian blood.

(2) When one parent of a person is an enrolled member, or the descendant of an enrolled member of the Osage Tribe, and the other parent is of non-Osage blood, the Osage Agency register of Indian families for the year ending December 31, 1901 shall be accepted as prima facie evidence in determining the quantum of Osage Indian blood.

(3) When one parent of a person is of non-Osage Indian blood, the certification of the superintendent or other officer in charge of the Indian Agency

having jurisdiction over the affairs of the tribe of which the non-Osage Indian parent is a member or descendant of a member, as to such parent's quantum of Indian blood, shall be accepted as prima facie evidence in determining the quantum of non-Osage Indian blood.

(4) When the non-Osage parent of a person is alleged to be of Indian blood, and the superintendent or other officer in charge of the Indian agency having jurisdiction over the affairs of the tribe of which such parent is an alleged member or descendant of a member thereof, is unable to certify as to the quantum of Indian blood of such parent, affidavits as to such parent's quantum of Indian blood, when properly executed by two qualified individuals, may be accepted.

§ 123.4 Notification; disagreement and decision.

When the superintendent shall have determined that a person, 21 years or over, is of less than one-half Indian blood, he shall notify such person of his finding and inform him that if objection is not received within 20 days from the date of notification, a certificate of competency will be issued. If the person claims to be of one-half or more Indian blood and that a certificate of competency should not be issued, he should submit to the superintendent two affidavits or other evidence in support of his claim. The claim, affidavits or other evidence of the person as to his quantum of blood shall be submitted to the Commissioner of Indian Affairs for a ruling before the certificate of competency is issued.

§ 123.5 Issuance of certificate of competency.

A certificate of competency shall be issued by the superintendent on Form 5-182 [1] to each person heretofore or hereafter attaining the age of 21 years and who has been determined to be of less than one-half Indian blood. Such certificate shall be recorded with the county clerk of Osage County, Oklahoma, before delivering the same to the person entitled thereto.

§ 123.6 Costs of recording certificates of competency.

The superintendent may expend the surplus funds of a person to make direct payments of the cost of recording a certificate of competency. If the person to whom a certificate of competency is issued has no surplus funds, the cost of recording the same shall be paid from Osage tribal funds.

§ 123.7 Delivery of cash and securities.

After issuance and recordation of a certificate of competency as authorized by the regulations in this part, the superintendent shall deliver to the individual named therein, or the legal guardian thereof, the original copy of the certificate of competency, together with all cash, stocks and bonds credited to the account of such individual upon the books of the Osage Agency, and obtain a receipt therefor.

[1] Filed with the original document. Copies may be obtained upon request at the Bureau of Indian Affairs, Department of the Interior, Washington, D.C.

PART 124—EQUALIZATION OF ALLOTMENTS, AGUA CALIENTE (PALM SPRINGS) RESERVATION, CALIFORNIA

Sec.

124.1 Definitions.
124.2 Purpose and scope.
124.3 Tribal reserves.
124.4 Airport lands.
124.5 Protection of incompetents and minors.
124.6 Designation of lands for selection purposes.
124.7 Order and method of selection.
124.8 Schedule of allotments.
124.9 Disposition of income from Parcel B, Spa Lease.

AUTHORITY: 5 U.S.C. 301. Interpret or apply acts of January 12, 1891 (26 Stat. 712), March 2, 1917 (39 Stat. 969, 976), and September 21, 1959 (73 Stat. 602).

SOURCE: 25 FR 1831, Mar. 2, 1960, unless otherwise noted.

§ 124.1 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Band" means the Agua Caliente (Palm Springs) Band of Mission Indians.

(c) "Allottee" means a member of the Band living on September 21, 1959, who has received an allotment on the Agua Caliente (Palm Springs) Reservation, California, or receives an allotment under section 2 of the Act of September 21, 1959 (73 Stat. 602).

(d) "Participating allottee" means an allottee as defined herein who has received an allotment with a value that is less than the equalization figure deemed feasible by the Secretary in accordance with this regulation.

§ 124.2 Purpose and scope.

(a) The purpose of this regulation is to establish the procedure to be followed to equalize as nearly as possible the values of allotments of land on the Agua Caliente (Palm Springs) Reservation in California, in accordance with the provisions of the Act of September 21, 1959 (73 Stat. 602). Compliance with these procedures shall be deemed complete and full equalization of allotments on the Agua Caliente Reservation. This regulation supersedes all prior instructions regarding the equalization of allotments.

(b) Individuals who received allotments but who were not living on September 21, 1959, shall be excluded from equalization.

(c) The values to be used as a basis for equalization shall be the values of the allotments as set out in contract appraisals made for the Bureau of Indian Affairs in 1957 and 1958, excluding the value of any improvements thereon; but if lands have been sold under supervision of the Bureau of Indian Affairs by an allottee, the value used as a basis for equalization will be the amount received in such sale, excluding the value assigned to any improvements thereon, and where lands have been fee patented and sold by an allottee, the value used as a basis for equalization will be the appraised value of the land, excluding improvements, at the time it was sold, regardless of the amount received in the sale.

(d) The value of tribal lands available for equalization will also be determined on the basis of the appraisals made by independent contract appraisers. On the basis of such values, the Secretary shall calculate the highest possible level of equalization that is feasible for the allottees by allotting all of the tribal land, except the tribal reserves described herein, without regard to the acreage limitation imposed by statute prior to September 21, 1959.

§ 124.3 Tribal reserves.

The following tribal lands shall not be subject to allotment but shall be designated as tribal reserves for the benefit and use of the Band:

Cemetery No. 1—W½, NE¼, NW¼, SE¼ (Block 235), sec. 14, T. 4 S., R. 4 E., San Bernardino meridian, California.

Cemetery No. 2—A two-acre tract, that includes the area designated in Secretarial Order of November 5, 1958, the description of which will be determined after consultation with the Band.

Roman Catholic Church—Lot 29, sec. 14, T. 4 S., R. 4 E., San Bernardino meridian California, containing 2 acres, more or less.

Mineral Springs—Lots 3a, 4a, 13 and 14, sec. 14, T. 4 S., R. 4 E., San Bernardino meridian, California.

San Andreas Canyon—W½, SE¼, SE¼, SE¼, sec. 3, T. 5 S., R. 4 E., San Bernardino meridian, California.

Palm Canyon—S½ and S½, N½, sec. 14, T. 5 S., R. 4 E.; all of sec. 24, T. 5 S., R. 4 E., San Bernardino meridian, California.

Tahquitz Canyon—SW¼, sec. 22 T. 4 S., R. 4 E.; N½, sec. 28, T. 4 S., R. 4 E., San Bernardino meridian, California.

Murray Canyon—E½, sec. 10, T. 5 S., R. 4 E., San Bernardino meridian, California.

§ 124.4 Airport lands.

The unallotted portions of sec. 18, T. 4 S., R. 5 E., San Bernardino meridian, and sec. 12, T. 4 S., R. 4 E., San Bernardino meridian, which are in the municipal airport of the City of Palm Springs shall be subject to selection for equalization purposes with the following qualifications: If a sale of such lands to the City of Palm Springs is consummated pursuant to section 3(d) of the Act of September 21, 1959 (73 Stat. 602), any participating allottee who makes an equalization selection from the lands sold to the City shall receive in lieu thereof such share of the proceeds of the sale as his equalization units in the airport lands bear to the total equalization units of the airport lands, as established in accordance with § 124.6.

§ 124.5 Protection of incompetents and minors.

The Secretary shall cause the appointment of a guardian or conservator of the estate of all minor allottees and for those adult allottees who, in his judgment, are in need of assistance in handling their affairs, in accordance with applicable State laws before making any equalization allotments to them.

§ 124.6 Designation of lands for selection purposes.

The Secretary shall prepare maps of all tribal lands, except those reserved areas enumerated above, showing thereon a division of such lands into parcels of sizes consistent with the requirements of the participating allottees, giving all possible regard to maintaining such plottage factors as will preserve to the highest degree the values inherent in the lands thus being designated. All parcels shall conform, as nearly as possible, to aliquot parts of legal subdivisions of the public land surveys. The maps will show unit values for each designated parcel, one unit for each $5,000 of value. Values may be rounded off to the nearest one-half unit.

§ 124.7 Order and method of selection.

(a) The Secretary shall prepare a list of allottees entitled to participate in equalization. Number 1 on the list shall be the participating allottee having the lowest valued allotment. Number 2 shall be the participating allottee having next to the lowest valued allotment, and so forth, in ascending order of values. Participating allottees shall make their selections in the order in which they appear on the list. Participating allottees (or the guardians of such minor allottees and adults for whom guardians or conservators have been appointed under appropriate State law) shall be informed in writing by certified mail of the time set for making the selections and the number of equalization units to which they are entitled. The notice shall be received at least ten (10) days in advance of the time set for the participating allottee's appearance at the Bureau of Indian Affairs Office in Palm Springs, California. Each participating allottee shall be allowed from 12 o'clock noon of the day of his scheduled appearance to 12 o'clock noon the following day within which to make his equalization selection.

(b) A participating allottee shall select such parcel or parcels as will satisfy his equalization entitlement. A participating allottee may, in the discretion of the Secretary, select a portion of a designated parcel if it is necessary in order for him to obtain his full entitlement. A selection must be made by the individual participating allottee or by a representative authorized by appropriate power of attorney in writing to act for him, except that in the case of minors and adults for whom guardians or conservators have been appointed under appropriate State laws, the selection must be made by such guardian or conservator who will be required to exhibit their authorization and to establish their identity.

(c) If a participating allottee fails to complete his selection at the time set, he shall lose his turn in the selection process. Such an individual may appear at the Bureau of Indian Affairs Office on any following day, until ten (10) days after the date set for the final equalization selection, and file his selection. If such individual appears on a day assigned to another participating allottee, the scheduled participating allottee's selection will have priority. If a participating allottee has not made his selection within ten (10) days after the time set for the final selection, the Secretary shall make a selection for him. The period of time allowed for making selections are maximum periods. The Secretary and the participating allottees concerned may by mutual consent proceed in the established order with the selection of lands without awaiting the time set for the selection.

(d) If a participating allottee dies subsequent to September 21, 1959, the selection of his equalization allotment shall be made by the heirs, or in the case of unprobated estates, by the presumptive heirs of the estate. If they cannot agree within the time allowed by this regulation, the selection shall be made by the Secretary.

(e) Selections shall be made on forms approved by the Secretary. The selection of an allotment pursuant to this regulation shall not create a vested right in the land until all selections authorized by this regulation have been made, included in one schedule and approved by the Secretary, and the selection form will so provide.

§ 124.8 Schedule of allotments.

Upon completion of the allotment selections, a certified allotment schedule in two parts, designated A and B, containing the names, legal descriptions of the selections and their allotment numbers, and other pertinent information, shall be prepared and submitted for approval to the Secretary. Part A of the schedule shall contain all selections except those situated within the Palm Springs municipal airport in sec. 18, T. 4 S., R. 5 E., and sec. 12, T. 4 S., R. 4 E., San Bernardino meridian, California. Part B of the schedule shall contain the selections made within the Palm Springs municipal airport. Upon approval of the schedule, trust patents shall be issued for the allotment selections described in Part A thereof. As to the selections in Part B of the schedule, if the sale to the City of Palm Springs is consummated, the proceeds shall be divided as provided in § 124.4; if the sale is not consummated, trust patents shall be issued for such allotment selections.

§ 124.9 Disposition of income from Parcel B, Spa Lease.

Any net rents, profits, and other revenues derived from that portion of the Mineral Springs tribal reserve as provided for in § 124.3, which is designated as Parcel B in the supplement dated September 8, 1958, to the lease by and between the Agua Caliente Band of Mission Indians and Palm Springs Spa, or the net income derived from the investment of such net rents, profits, and other revenues from the sale of said lands or assets purchased from the net rents, profits, and other revenues aforesaid or the net income from the investment thereof, shall be deposited in the Treasury of the United States to the credit of the Agua Caliente Band. Such fund may be used for such purposes as may be designated by the governing body of the Band and approved by the Secretary, except that such fund may be distributed only to those enrolled members who are entitled to an equalization allotment or to a cash payment in satisfaction thereof under the Act of September 21, 1959 (73 Stat. 602), or in the case of such a member who dies after that date, to those entitled to participate in his estate. Such distribution shall be per capita to living enrolled members and per stirpes to participants in the estate of a deceased member.

[26 FR 3150, Apr. 13, 1961]

PART 125—REALLOTMENT OF LANDS TO UNALLOTTED INDIAN CHILDREN

Sec.

125.1 Relinquishment [1] of original patent.
125.2 Relinquishment when original patent has been lost or destroyed.

CROSS REFERENCES: For Bureau of Land Management regulations pertaining to allotments to Indians and Eskimos, see 43 CFR Parts 2530 and 2560. For Bureau of Land Management regulations pertaining to restored and ceded Indian lands, see 43 CFR Part 2510.

§ 125.1 Relinquishment of original patent.

To effect a reallotment under section 3 of the Act of June 25, 1910 (36 Stat. 856; 25 U.S.C. 408), the Indian owner shall endorse on the original patent a relinquishment of all lands described therein and explain the purpose of the relinquishment. The relinquishment shall name the child or children to be reallotted and follow with descriptions by legal subdivisions of the land. If a part of the allotment is being retained by the Indian owner, the relinquishment and application for reallotment may describe only the tract to be reallotted. The relinquishment must be signed by the original allottee or owner of the land involved and be acknowledged before a superintendent of an Indian agency or an offi-

[1] The reallotment provisions herein dealt with are not applicable on reservations subject to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984, as amended; 25 U.S.C. 461-479).

cer authorized to administer oaths. The signatures of those who cannot write must be by thumb mark and be witnessed.

(Sec. 3, 36 Stat. 856; 25 U.S.C. 408)
[22 FR 10564, Dec. 24, 1957]

§ 125.2 Relinquishment when original patent has been lost or destroyed.

When the original patent has been lost or destroyed, the relinquishment and application for reallotment may be submitted in the form of a letter, which must be accompanied by an affidavit showing the loss or destruction of the original patent. If no patent has been issued, that fact should be set out in the letter.

(Sec. 3, 36 Stat. 856; 25 U.S.C. 408)
[22 FR 10564, Dec. 24, 1957]

PART 126—ALLOTMENT OF LANDS ON THE CABAZON, AND AUGUSTINE INDIAN RESERVATIONS, RIVERSIDE COUNTY, CALIFORNIA

Sec.
126.1 Purpose.
126.2 Scope.
126.3 Size of allotments.
126.4 Description of allotments.
126.5 Method of selection.
126.6 Notice of allotment.
126.7 Priority of filing allotment selections on improved lands.
126.8 Priority of selecting remaining lands available for allotment.
126.9 Disposition of improvements.
126.10 Submittal of allotment schedule.
126.11 Special instructions.

AUTHORITY: Sec. 10, 64 Stat. 472.

SOURCE: 22 FR 10564, Dec. 24, 1957, unless otherwise noted.

§ 126.1 Purpose.

These procedures and requirements will govern the preparation of allotment schedules containing the names and allotment selections of the unallotted members, called members in this part, the Cabazon and Augustine Bands of Mission Indians of the Cabazon and Augustine Indian Reservations, respectively.

§ 126.2 Scope.

These procedures and requirements shall apply to those Indians whose names appear on the official enrollment records of the Cabazon or Augustine Bands of Mission Indians as of June 30, 1949, approved by the Secretary of the Interior, who have not heretofore received allotments.

§ 126.3 Size of allotments.

Each member shall be entitled to an allotment not to exceed 40 acres of land classed as irrigable or potentially irrigable by the Secretary of the Interior.

§ 126.4 Description of allotments.

Each allotment selection must be described as a legal subdivision of a section based upon public land surveys made by the Department of the Interior and wherever possible must consist of a contiguous tract of land.

§ 126.5 Method of selection.

The Area Director, Sacramento Area Office, or his representative, shall be available during the periods hereinafter specified at an office of the Bureau of Indian Affairs located in the proximity of the Cabazon and Augustine Reservations to assist the Indians in making allotment selections. A map of each reservation on which is shown the irrigable and potentially irrigable land, which may be allotted, is available in such office during regular business hours for use in making the allotment selections. Each eligible member shall select for his allotment land shown on the map. Priority of selection shall be by families in the order of their appearance at the designated office. If two or more applicants appear at the designated office simultaneously, the order of their priority shall be determined by drawing lots. Selections for minors shall be made by one of the parents, or by a legally appointed guardian. Eligible adult members who have been adjudged non compos mentis may have selections made for them by a legally appointed guardian. Members who are not able to appear personally and sign the required forms for their selection may in writing appoint a representative to make the allotment selection, provided the appointment is duly acknowledged before a notary public or other officer authorized to take acknowledgments.

Failure of any eligible Indian to make an allotment selection within the period of 60 days from the date of "Notice of Allotment", as prescribed in § 126.6, shall constitute authority for the Area Director to make a selection for such member. Appropriate forms for making selections shall be furnished by the Area Director.

§ 126.6 Notice of allotment.

The Area Director shall mail a copy of the regulations in this part, together with a letter entitled "Notice of Allotment" bearing the date of the day it is posted, by registered mail to each member eligible for an allotment to the member's last known address. The letter shall inform each eligible member of the place where and the period of time when allotment selections will be accepted. In addition copies of the regulations in this part, together with copies of the Area Director's letter, shall be posted at several conspicuous places on and in the vicinity of the respective reservations.

§ 126.7 Priority of filing allotment selections on improved lands.

The land classified as "improved" will be so designated on the map used for allotting purposes. A priority in selecting this class of land for allotment is given to the members who own the improvements on the lands, provided such improvements were placed thereon prior to July 1, 1954. The owner of the improvements on the land shall file on such land for allotment selection within 15 days from the date of the "Notice of Allotment."

§ 126.8 Priority of selecting remaining lands available for allotment.

Upon the expiration of the 15-day period prescribed in § 126.7 all members, except those who filed allotment selections under § 126.7, shall file their selections on the remaining improved and unimproved irrigable or potentially irrigable land available for allotment. Filings thus made will be honored in the order of their receipt at the allotting office. A period of 45 days will be allowed for the filing of these selections. Upon the expiration of this 45-day period, selections shall be made by the Area Director, as prescribed in § 126.5, for those members who have not filed their allotment selections.

§ 126.9 Disposition of improvements.

Any member owning improvements on land selected properly by another member may remove, or otherwise dispose of the improvements, within a 60-day period from date of notification by the Area Director to such member, so to dispose of such improvements. If in any case the whereabouts of the owner of the improvements is not known, an additional reasonable period of time may be allowed by the Area Director in which the owner, or his duly appointed representative, may remove or dispose of such improvements.

§ 126.10 Submittal of allotment schedule.

Upon the completion of the allotment selections, a certified allotment schedule for each reservation, containing the names and the legal descriptions of the selections of the members and other pertinent information, shall be prepared by the Area Director. Each allotment schedule shall be submitted for approval to the Secretary of the Interior, through the Commissioner of Indian Affairs, before the issuance of trust patents for each of the allotment selections described therein.

§ 126.11 Special instructions.

To facilitate the work of the Area Director, the Commissioner may issue special instructions consistent with these procedures and requirements.

PART 127—OSAGE LANDS

Sec.

127.51 Definitions.
127.52 Application for change in designation of homestead.
127.53 Order to change designation of homestead.
127.54 Exchanges of restrictive lands.
127.55 Institution of partition proceedings.
127.56 Partition records.
127.57 Approval of deeds or other instruments vesting title on partition and payment of costs.
127.58 Disposition of proceeds of partition sales.

AUTHORITY: 5 U.S.C. 301. Interpret or apply 62 Stat. 18; 25 U.S.C. 331 note.

(d) 066 O - 80 - 22

SOURCE: 22 FR 10565, Dec. 24, 1957, unless otherwise noted.

§ 127.51 Definitions.

When used in this part:

(a) "Homestead" means the restricted nontaxable lands, not exceeding 160 acres, allotted to an enrolled member of the Osage Tribe pursuant to the act of June 28, 1906 (34 Stat. 539), or the restricted surplus lands designated in lieu thereof pursuant to the act of May 25, 1918 (40 Stat. 578).

(b) "Surplus land" means those restricted lands, other than the homestead, allotted to an enrolled member of the Osage Tribe pursuant to the act of June 28, 1906 (34 Stat. 539).

§ 127.52 Application for change in designation of homestead.

Any Osage allottee or the legal guardian thereof may make application to change his homestead for an equal area of his surplus land. The application shall give in detail the reasons why such change is desired and shall be submitted to the Osage Indian Agency on the form "Application to Change Designation of Homestead."

§ 127.53 Order to change designation of homestead.

The application of an Osage allottee, or his legal guardian, may be approved by the Secretary of the Interior, or his authorized representative, and an order issued to change designation of homestead, if it is found that the applicant owns an equal area of surplus land. The expense of recording the order shall be borne by the applicant. The order to change designation shall be made on the form "Order to Change Designation of Homestead."

§ 127.54 Exchanges of restrictive lands.

Upon written application of the Indians involved, the exchange of restricted lands between adult Indians, and between adult Indians and non-Indians, may be approved by the Secretary of the Interior, or his authorized representative. Title to all lands acquired under this part by an Indian who does not have a certificate of competency shall be taken by deed containing a clause restricting alienation or encumbrance without the consent of the Secretary, or his authorized representative. In case of differences in the appraised value of lands under consideration for exchange, the application of an Indian for funds to equalize such differences may be approved to the extent authorized by § 108.8 of this chapter.

§ 127.55 Institution of partition proceedings.

(a) Prior authorization should be obtained from the Secretary, or his authorized representative, before the institution of proceedings to partition the lands of deceased Osage allottees in which any interest is held by an Osage Indian not having a certificate of competency. Requests for authority to institute such partition proceedings shall contain a description of the lands involved, the names of the several owners and their respective interests and the reasons for such court action. Authorization may be given for the institution of partition proceedings in a court of competent jurisdiction when it appears to the best interest of the Indians involved to do so and the execution of voluntary exchange deeds is impracticable.

(b) When it appears to the best interest of the Indians to do so, the Secretary's, or his authorized representative's, authorization to institute partition proceedings may require that title to the lands be quieted in the partition action in order that the deeds issued pursuant to the proceedings shall convey good and merchantable title to the grantee therein. (See section 6, 37 Stat. 87.)

§ 127.56 Partition records.

Upon completion of an action in partition, a copy of the judgment roll showing schedule of costs and owelty moneys having accrued to or from the several parties, together with deeds, or other instruments vesting title on partition, in triplicate, shall be furnished to the Osage Agency. The original allotment number shall follow the legal description on all instruments vesting title. When a grantee is a member of the Osage Tribe who has not received a certificate of competency, deeds or other instruments vesting title shall

contain the following clause against alienation:

Subject to the condition that while title to the above-described lands shall remain in the grantee or his Osage Indian heirs or devisees who do not have certificates of competency, the same shall not be alienated or encumbered without approval of the Secretary of the Interior or his authorized representative.

§ 127.57 Approval of deeds or other instruments vesting title on partition and payment of costs.

Upon completion of the partition proceedings in accordance with the law and in conformity with the regulations in this part, the Secretary, or his authorized representative, may approve the deeds, or other instruments vesting title on partition, and may disburse from the restricted (accounts) funds of the Indians concerned, such amounts as may be necessary for payment of their share of court costs, attorney fees, and owelty moneys.

§ 127.58 Disposition of proceeds of partition sales.

Owelty moneys due members of the Osage Tribe who do not have certificates of competency shall be paid into the Treasury of the United States and placed to the credit of the Indians upon the same conditions as attach to segregated shares of the Osage national fund.

PART 128—SALE OF IRRIGABLE LANDS, SPECIAL WATER CONTRACT REQUIREMENTS

CROSS REFERENCE: For additional regulations pertaining to the payment of fees and charges in connection with the sale of irrigable lands, see Part 129 and §§ 211.4 and 121.21 of this chapter. For general regulations pertaining to the issuance of patents in fee, see Part 121 of this chapter.

§ 128.1 Conditions of contract.

(a) The form of contract (Form 5-462b)[1] for sale of irrigable lands specifically provides that the purchaser will obligate and pay on a per acre basis all irrigation charges assessed or to be assessed against the land purchased including accrued assessment, which accrued assessment shall be paid prior to the approval of the sale, and for the payment of the construction and operation and maintenance assessments on the due dates of each year. The agreement is to be acknowledged and recorded in the county records in which county the land is situated. The charges incidental to the recording of the instrument shall be paid by the purchaser at the time of executing the agreement.

(b) A strict compliance with the terms of paragraph (a) of this section is absolutely necessary and required.

(Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U.S.C. 385. Interprets or applies sec. 1, 41 Stat. 409; 25 U.S.C. 386)

[22 FR 10566, Dec. 24, 1957]

NOTE: On May 12, 1921, Circular No. 1677, re sale of irrigable lands, was addressed to all superintendents. It was pointed out therein that the collection of irrigation construction charges was required by the terms of an act approved February 14, 1920 (41 Stat. 409; 25 U.S.C. 386), and that in addition to the construction charge there was an operation and maintenance charge assessable annually that must be paid by the landowners benefited; furthermore, that the purpose of this circular was to point out to the superintendents the necessity of advising prospective purchasers that irrigation charges must be paid and that a so-called paid-up water right was not conveyed with the land. A form of agreement to be executed by the prospective purchaser accompanied this circular.

It has been brought to the attention of the Bureau that irrigation construction charges and operation and maintenance charges have accrued against irrigable allotments prior to the time of their being advertised for sale and that the superintendents have failed to provide for payment of the accrued irrigation charges, with the result that no means are apparent for their collection.

With a view of preventing any future misunderstanding the form of contract accompanying Circular No. 1677 has been redrafted and Form 5-462b assigned to it. The circular has been designated "No. 1677a."

[1] Forms may be obtained from the Commissioner of Indian Affairs, Washington, D.C.

PART 129—INCLUSION OF LIENS IN ALL PATENTS AND INSTRUMENTS EXECUTED

Sec.
129.1 Liens.
129.2 Instructions.
129.3 Leases to include description of lands.
129.4 Prompt payment of irrigation charges by lessees.

AUTHORITY: Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U.S.C. 385.

SOURCE: 22 FR 10566, Dec. 24, 1957, unless otherwise noted.

§ 129.1 Liens.

The act of March 7, 1928 (45 Stat. 210; 25 U.S.C. 387) creates a first lien against irrigable lands under all Indian irrigation projects where the construction, operation and maintenance costs of such projects remain unpaid and are reimbursable, and directs that such lien shall be recited in any patent or instrument issued for such lands to cover such unpaid charges. Prior to the enactment of this legislation similar liens had been created by legislative authority against irrigable lands of the projects on the Fort Yuma, Colorado River, and Gila River Reservations, in Arizona; Blackfeet, Fort Peck, Flathead, Fort Belknap, and Crow Reservations, Mont.; Wapato project, Yakima Reservation, Wash.; the irrigable lands on the Colville Reservation within the West Okanogan irrigation district, Washington, and the Fort Hall Reservation, Idaho. This legislation, therefore, extends protection similar to that existing in the legislation applicable to the projects on the reservations above mentioned.

CROSS REFERENCES: For operation and maintenance charges and construction costs, see Parts 221, 211, and 215 of this chapter.

§ 129.2 Instructions.

All superintendents and other officers are directed to familiarize themselves with this provision of law, and in all cases involving the issuance of patents or deeds direct to the Indian or purchaser of Indian allotments embracing irrigable lands, they will recite in the papers forwarded to the Department for action the fact that the lands involved are within an irrigation project (giving the name) and accordingly are subject to the provisions of this law. This requirement will be in addition to the existing regulations requiring the superintendents in case of sales of irrigable lands to obtain from the project engineer a written statement relative to the irrigability of the lands to be sold, and whether or not there are any unpaid irrigation charges, together with the estimated per acre construction cost assessable against the land involved in the sale. Each sale will also be accompanied by contract executed in accordance with regulations obligating the purchaser to pay the accrued charges, namely, construction, operation, and maintenance, prior to the approval of the sale and to assume and pay the unassessed irrigation charges in accordance with regulations promulgated by the Secretary of the Interior.

CROSS REFERENCES: For additional regulations pertaining to the payment of fees and charges in connection with the sale of irrigable lands, see Part 128 and §§ 211.4 and 121.21 of this chapter.

§ 129.3 Leases to include description of lands.

It is important, also, for superintendents in leasing irrigable lands to present to the project engineer lists containing descriptions of the lands involved for his approval of the irrigable acreage and for checking as to whether or not such lands are in fact irrigable under existing works. Strict compliance with this section is required for the purpose of avoiding error.

§ 129.4 Prompt payment of irrigation charges by lessees.

Superintendents will also see that irrigation charges are promptly paid by lessees, and where such charges are not so paid take appropriate and prompt action for their collection. Such unpaid charges are a lien against the land, and accordingly any failure on the part of the superintendents to collect same increases the obligation against the land.

PART 130—ALLOTMENT OF LANDS ON THE TORRES-MARTINEZ INDIAN RESERVATION, CALIFORNIA

Sec.
130.1 Purpose.
130.2 Scope.
130.3 Size of allotments.
130.4 Description of allotments.
130.5 Method of selection.
130.6 Notice of allotment.
130.7 Priority of owners of improvements.
130.8 Priority of previous selectees.
130.9 Priority of selecting remaining lands available for allotment.
130.10 Disposition of improvements.
130.11 Submittal of allotment schedule.
130.12 Issuance of trust patents.
130.13 Special instructions.

AUTHORITY: Sec. 10, 64 Stat. 472.

SOURCE: 23 FR 1921, Mar. 22, 1958, unless otherwise noted.

§ 130.1 Purpose.

The rules and regulations in this part will govern the preparation of allotment schedules containing the names and allotment selections of the unallotted members, hereinafter called members, of the Torres-Martinez Band of Mission Indians of the Torres-Martinez Indian Reservation.

§ 130.2 Scope.

The rules and regulations in this part shall apply to those Indians whose names appear on the official enrollment records of the Torres-Martinez Band of Mission Indians as of June 30, 1949, approved by the Secretary of the Interior, who have not heretofore received allotments.

§ 130.3 Size of allotments.

Each member shall be entitled to an allotment of not to exceed 40 acres of land classed as irrigable or potentially irrigable and available for allotment by the Secretary of the Interior.

§ 130.4 Description of allotments.

Each allotment selection must be described by legal subdivision or aliquot part thereof based upon public land surveys made by the Department of the Interior and wherever possible must consist of a single tract or contiguous tracts of land.

§ 130.5 Method of selection.

The Area Director, Sacramento Area Office, or his representative, shall be available during the periods specified in this part, at an office of the Bureau of Indian Affairs located in the proximity of the Torres-Martinez Reservation to assist the Indians in making allotment selections. A map of the reservation on which is shown the irrigable and potentially irrigable land which may be allotted, shall be available in such office during regular business hours for use in making the allotment selections. Each adult member shall select his allotment from tribal land available for allotment. Selections for minors shall be made by one of the parents or by the Area Director's authorized representative should the parents refuse or fail to make a selection. Selections for orphan members or members who are under legal disability shall be made by the Area Director's authorized representative. Members who are not able to appear personally and sign the required forms for their selection, may in writing appoint a representative to make the allotment selection, provided the appointment is duly acknowledged before a notary public or other officer authorized to take acknowledgments. Appropriate forms for making selections shall be furnished by the Area Director.

§ 130.6 Notice of allotment.

The Area Director shall mail a copy of the rules and regulations in this part, together with a letter entitled "Notice of Allotment" bearing the date it is posted, by registered mail to each member eligible for an allotment to the member's last known address. The letter shall inform each member of the place and the period of time when allotment selections will be accepted. In addition, copies of the rules and regulations in this part, together with copies of the Area Director's letter, shall be posted at several conspicuous places on and in the vicinity of the reservation.

§ 130.7 Priority of owners of improvements.

Priority in the selection of land, upon which there are improvements,

will be given to those members who own the improvements, provided such improvements were placed thereon prior to July 1, 1954. The lands classed as improved tracts will be designated on the map used for allotting purposes by the Area Director. The owner of the improvements on the land shall file on such land for allotment selection within a period of 15 days from the date of the "Notice of Allotment". Failure of such member to take the required action within the specified time will constitute a forfeiture of this priority right.

§ 130.8 Priority of previous selectees.

Priority in the selection of subjugated or unsubjugated land which has not been selected in accordance with § 130.7 will be given to those members who submit documentary evidence to show that a bona fide selection was made prior to August 25, 1950, the date of the act above cited. Acceptable proof must be in the form of an official letter or other document of acknowledgement from the Bureau of Indian Affairs. Members claiming priority rights as previous selectees will be given from the 15th day to the 45th day from the date of the "Notice of Allotment" for filing acceptable proof and 15 days following this to make selections. Priority of selection shall be based upon the order in which the previous selectees had filed their unapproved selections with the Bureau. Failure of a member to take the required action within the specified time will constitute a forfeiture of this priority right.

§ 130.9 Priority of selecting remaining lands available for allotment.

Upon the expiration of the 60-day period, as outlined in §§ 130.7 and 130.8, the order of preference for the members who have not yet made selections for the remaining lands will be determined by a drawing of numbers conducted by the Area Director, or his authorized representative. Notice of drawing for order number shall be sent to members by registered mail ten days in advance of the date set out for the drawing. There shall be only one drawing of numbers for all members. Members who are minors and others who are under legal disability shall have a number drawn for them by a parent or the Area Director's authorized representative. Members who are unable to appear personally may appoint a representative in accordance with the procedure for such appointment contained in § 130.5 Method of selection. All numbers shall be taken and the drawing closed on the date selected for same. If members eligible to draw a number either for themselves or for a minor shall fail to appear on the date set for the drawing, the representative of the Area Director is authorized to make the drawing for such persons. The selection of land shall be made in the order established by the drawing. The person entitled to make the first selection by reason of drawing the number "1" will be allowed five days from the date of notification within which to appear at the allotting office and make his selection. Following the completion of the allotment selection by the person holding the number "1" or the expiration of the 5-day period, whichever comes first, the holder of number "2" will be notified in writing to appear at the allotting office as soon as possible and not later than five days from the date of the notice for the purpose of making his selection. The holders of each of the next consecutive numbers drawn will be mailed a similar notice as the selection by the holder of the preceding number is completed or at the expiration of the 5-day period for making the selection. The selection of each selectee shall be made within five days from the date of his notification. Otherwise, the order of preference obtained in the drawing will be forfeited and his selection may not be made prior to the selection of the holder of the next highest number in the drawing, unless, due to circumstances beyond his control, he is unable to appear. If his selection is not made before the holder of the second highest number to his has made his selection, then his number shall be placed next in line. In the event he again fails to make a selection for himself or a member of his family, the Area Director or his authorized representative shall make such selections as may be necessary in order that the selection

process may not be unduly delayed and that the schedule of allotments may be closed.

§ 130.10 Disposition of improvements.

Any member owning improvements on land selected properly by another member may remove, or otherwise dispose of the improvements, within a 60-day period from the date of notification by the Area Director to such member to dispose of such improvements. If in any case the whereabouts of the owner of the improvements is not immediately known, an additional reasonable time may be allowed by the Area Director in which to locate the owner so that he, or his duly appointed representative, may have an opportunity to remove or dispose of such improvements.

§ 130.11 Submittal of allotment schedule.

Upon the completion of the allotment selections, a certified allotment schedule containing the names of the allottees, the legal descriptions of their selections and other pertinent information, shall be prepared by the Area Director. The allotment schedule shall be submitted to the Secretary of the Interior, through the Commissioner of Indian Affairs, for approval.

§ 130.12 Issuance of trust patents.

With the request for approval of the allotment schedule, the Area Director shall also request the Secretary of the Interior to authorize the Director, Bureau of Land Management to issue trust patents for each of the selections in accordance with the act of January 12, 1891 (26 Stat. 712), as amended by the act of March 2, 1917 (39 Stat. 969, 976).

§ 130.13 Special instructions.

To facilitate the work of the Area Director, the Commissioner, Bureau of Indian Affairs, may issue special instructions consistent with the rules and regulations in this part.

SUBCHAPTER L—LEASING AND PERMITTING

PART 131—LEASING AND PERMITTING

Sec.

131.1 Definitions.
131.2 Grants of leases by Secretary.
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131.5 Special requirements and provisions.
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131.8 Duration of leases.
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131.12 Subleases and assignments.
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131.14 Violation of lease.
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131.16 Fort Belknap Reservation.
131.17 Cabazon, Augustine, and Torres-Martinez Reservations, California.
131.18 Colorado River Reservation.
131.19 Grazing units excepted.
131.20 San Xavier and Salt River Pima-Maricopa Reservations.

AUTHORITY: 5 U.S.C. 301, R.S. 463 and 465; 25 U.S.C. 2 and 9. Interpret or apply sec. 3, 26 Stat. 795, sec. 1, 28 Stat. 305, secs. 1, 2, 31 Stat. 229, 246, secs. 7, 12, 34 Stat. 545, 34 Stat. 1015, 1034, 35 Stat. 70, 95, 97, sec. 4, 36 Stat. 856, sec. 1, 39 Stat. 128, 41 Stat. 415, as amended, 751, 1232, sec. 17, 43 Stat. 636, 641, 44 Stat. 658, as amended, 894, 1365, as amended, 47 Stat. 1417, sec. 17, 48 Stat. 984, 988, 49 Stat. 115, 1135, sec. 55, 49 Stat. 781, sec. 3, 49 Stat. 1967, 54 Stat. 745, 1057, 60 Stat. 308, secs. 1, 2, 60 Stat. 962, sec. 5, 64 Stat. 46, secs. 1, 2, 4, 5, 6, 64 Stat. 470, 69 Stat. 539, 540, 72 Stat. 968; 25 U.S.C. 380, 393, 393a, 394, 395, 397, 402, 402a, 403, 403a, 403b, 403c, 413, 415, 415a, 415b, 415c, 415d, 477, 635.

SOURCE: 26 FR 10966, Nov. 23, 1961, unless otherwise noted.

§ 131.1 Definitions.

As used in this part:

(a) "Secretary" means the Secretary of the Interior or his authorized representative acting under delegated authority.

(b) "Individually owned land" means land or any interest therein held in trust by the United States for the benefit of individual Indians and land or any interest therein held by individual Indians subject to Federal restrictions against alienation or encumbrance.

(c) "Tribal land" means land or any interest therein held by the United States in trust for a tribe, band, community, group or pueblo of Indians, and land that is held by a tribe, band, community, group or pueblo of Indians subject to Federal restrictions against alienation or encumbrance, and includes such land reserved for Indian Bureau administrative purposes when it is not immediately needed for such purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 476). This term also includes assignments of tribal land. Unless the terms of the assignment provide for the leasing of the land by the holder of the assignment, the tribe must join with the assignee in the grant of a lease.

(d) "Government land" means land, other than tribal land, acquired or reserved by the United States for Indian Bureau administrative purposes which are not immediately needed for the purposes for which they were acquired or reserved and land transferred to or placed under the jurisdiction of the Bureau of Indian Affairs.

(e) "Permit" means a privilege revocable at will in the discretion of the Secretary and not assignable, to enter on and use a specified tract of land for a specified purpose. The terms "lease", "lessor", and "lessee", when used in this part include, when applicable, "permit", "permitter", and "permittee", respectively.

§ 131.2 Grants of leases by Secretary.

(a) The Secretary may grant leases on individually owned land on behalf of: (1) Persons who are non compos mentis; (2) orphaned minors; (3) the undetermined heirs of a decedent's estate; (4) the heirs or devisees to individually owned land who have not been able to agree upon a lease during the three-month period immediately following the date on which a lease

may be entered into; provided, that the land is not in use by any of the heirs or devisees; and (5) Indians who have given the Secretary written authority to execute leases on their behalf.

(b) The Secretary may grant leases on the individually owned land of an adult Indian whose whereabouts is unknown, on such terms as are necessary to protect and preserve such property.

(c) The Secretary may grant permits on Government land.

§ 131.3 Grants of leases by owners or their representatives.

The following may grant leases: (1) Adults, other than those non compos mentis, (2) adults other than those non compos mentis, on behalf of their minor children, and on behalf of minor children to whom they stand in loco parentis when such children do not have a legal representative, (3) the guardian, conservator or other fiduciary, appointed by a state court or by a tribal court operating under an approved constitution or law and order code, of a minor or persons who are non compos mentis or are otherwise under legal disability, (4) tribes or tribal corporations acting through their appropriate officials.

§ 131.4 Use of land of minors.

The natural or legal guardian, or other person standing in loco parentis of minor children who have the care and custody of such children may use the individually owned land of such children during the period of minority without charge for the use of the land if such use will enable such person to engage in a business or other enterprise which will be beneficial to such minor children.

§ 131.5 Special requirements and provisions.

(a) All leases made pursuant to the regulations in this part shall be in the form approved by the Secretary and subject to his written approval.

(b) Except as otherwise provided in this part no lease shall be approved or granted at less than the present fair annual rental.

(1) An adult Indian owner of trust or restricted land may lease his land for religious, educational, recreational or other public purposes to religious organizations or to agencies of the Federal, State or local government at a nominal rental. Such adult Indian may lease land to members of his immediate family with or without rental consideration. For purposes of this section, "immediate family" is defined as the Indian's spouse, brothers, sisters, lineal ancestors, or descendants.

(2) In the discretion of the Secretary, tribal land may be leased at a nominal rental for religious, educational, recreational, or other public purposes to religious organizations or to agencies of Federal, State, or local governments; for purposes of subsidization for the benefit of the tribe; and for homesite purposes to tribal members provided the land is not commercial or industrial in character.

(3) Leases may be granted or approved by the Secretary at less than the fair annual rental when in his judgment such action would be in the best interest of the landowners.

(c) Unless otherwise provided by the Secretary a satisfactory surety bond will be required in an amount that will reasonably assure performance of the contractual obligations under the lease. Such bond may be for the purpose of guaranteeing:

(1) Not less than one year's rental unless the lease contract provides that the annual rental shall be paid in advance.

(2) The estimated construction cost of any improvement to be placed on the land by the lessee.

(3) An amount estimated to be adequate to insure compliance with any additional contractual obligations.

(d) The lessee may be required to provide insurance in an amount adequate to protect any improvements on the leased premises; the lessee may also be required to furnish appropriate liability insurance, and such other insurance as may be necessary to protect the lessor's interest.

(e) No lease shall provide the lessee a preference right to future leases nor shall any lease contain provisions for renewal, except as otherwise provided in this part. No lease shall be entered into more than 12 months prior to the commencement of the term of the

lease. Except with the approval of the Secretary no lease shall provide for payment of rent in advance of the beginning of the annual use period for which such rent is paid. The lease contract shall contain provisions as to the dates rents shall become due and payable.

(f) Leases granted or approved under this part shall contain provisions as to whether payment of rentals is to be made direct to the owner of the land or his representative or to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

(g) All leases issued under this part shall contain the following provisions:

(1) While the leased premises are in trust or restricted status, all of the lessee's obligations under this lease, and the obligations of his sureties, are to the United States as well as to the owner of the land.

(2) Nothing contained in this lease shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease; however, such termination shall not serve to abrogate the lease. The owners of the land and the lessee and his surety or sureties shall be notified of any such change in the status of the land.

(3) The lessee agrees that he will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose.

(h) Leases granted or approved under this part on individually owned lands which provide for payment of rental direct to the owner or his representative shall contain the following provisions:

(1) In the event of the death of the owner during the term of this lease and while the leased premises are in trust or restricted status, all rentals remaining due or payable to the decedent or his representative under the provisions of the lease shall be paid to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

(2) While the leased premises are in trust or restricted status, the Secretary may in his discretion suspend the direct rental payment provisions of this lease in which event the rentals shall be paid to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

§ 131.6 Negotiation of leases.

(a) Leases of individually owned land or tribal land may be negotiated by those owners or their representatives who may execute leases pursuant to § 131.3.

(b) Where the owners of a majority interest, or their representatives, who may grant leases under § 131.3, have negotiated a lease satisfactory to the Secretary he may join in the execution of the lease and thereby commit the interests of those persons in whose behalf he is authorized to grant leases under § 131.2(a) (1), (2), (3), and (5).

(c) Where the Secretary may grant leases under § 131.2 he may negotiate leases when in his judgment the fair annual rental can thus be obtained.

§ 131.7 Advertisement.

Except as otherwise provided in this part, prior to granting a lease or permit as authorized under § 131.2 the Secretary shall advertise the land for lease. Advertisements will call for sealed bids and will not offer preference rights.

§ 131.8 Duration of leases.

Leases granted or approved under this part shall be limited to the minimum duration, commensurate with the purpose of the lease, that will allow the highest economic return to the owner consistent with prudent management and conservation practices, and except as otherwise provided in this part shall not exceed the number of years provided for in this section. Except for those leases authorized by § 131.5(b) (1) and (2), unless the consideration for the lease is based primarily on percentages of income produced by the land, the lease shall provide for periodic review, at not less than five-year intervals, of the equities involved. Such review shall give consideration to the economic conditions at the time, exclusive of improvement or development required by the contract or the contribution value of such improvements. Any adjustments of rental resulting from such review may be made by the Sec-

retary where he has the authority to grant leases, otherwise the adjustment must be made with the written concurrence of the owners and the approval of the Secretary.

(a) Leases for public, religious, educational, recreational, residential, or business purposes shall not exceed 25 years but may include provisions authorizing a renewal or an extension for one additional term of not to exceed 25 years, except such leases of land on the Hollywood (formerly Dania) Reservation, Fla.; the Navajo Reservation, Ariz.; N. Mex., and Utah; the Palm Springs Reservation, Calif.; the Southern Ute Reservation, Colo.; the Fort Mohave Reservation, Calif., Ariz., and Nev.; the Pyramid Lake Reservation, Nev.; the Gila River Reservation, Ariz.; the San Carlos Apache Reservation, Ariz.; the Spokane Reservation, Wash.; the Hualapai Reservation, Ariz.; the Swinomish Reservation, Wash.; the Pueblos of Cochiti, Pojoaque, Tesuque, and Zuni, N. Mex.; and land on the Colorado River Reservation, Ariz., and Calif., as stated in § 131.18; which leases may be made for terms of not to exceed 99 years.

(b) Leases may be made for 25 years for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops. To determine whether a long term lease is justified, it is necessary to give consideration to the nature of the crop to be grown, including the feasibility of growing the proposed crop. The amount or substantially of the investment, as well as the necessity of such an investment in order to grow the proposed crop, are also elements to consider in evaluating the term of the proposed lease.

(c) Farming leases not granted for the purpose of growing specialized crops shall not exceed five years for dry-farming land or ten years for irrigable land.

(d) Grazing leases which require substantial development or improvement of the land shall not exceed ten years.

(e) Leases granted by the Secretary pursuant to § 131.2(a)(3) shall be for a term of not to exceed two years except as otherwise provided in § 131.6(b).

[26 FR 10966, Nov. 23, 1961, as amended at 29 FR 2542, Feb. 18, 1964; 34 FR 3686, Mar. 1, 1969]

§ 131.9 Ownership of improvements.

Improvements placed on the leased land shall become the property of the lessor unless specifically excepted therefrom under the terms of the lease. The lease shall specify the maximum time allowed for removal of any improvements so excepted.

§ 131.10 Unitization for leasing.

Where it appears advantageous to the owners and advantageous to the operation of the land a single lease contract may include more than one parcel of land in separate ownerships, tribal or individual, provided the statutory authorities and other applicable requirements of this part are observed.

§ 131.11 Conservation and land use requirement.

Farming and grazing operations conducted under leases granted or approved under this part shall be conducted in accordance with recognized principles of good practice and prudent management. Land use stipulations or conservation plans necessary to define such use shall be incorporated in and made a part of the lease.

§ 131.12 Subleases and assignments.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, a sublease, assignment, amendment or encumbrance of any lease or permit issued under this part may be made only with the approval of the Secretary and the written consent of all parties to such lease or permit, including the surety or sureties.

(b) With the consent of the Secretary, the lease may contain a provision authorizing the lessee to sublease the premises, in whole or in part, without further approval. Subleases so made shall not serve to relieve the sublessor from any liability nor diminish any supervisory authority of the Secretary provided for under the approved lease.

(c) With the consent of the Secretary, the lease may contain provisions authorizing the lessee to encumber his leasehold interest in the premises for the purpose of borrowing capital for

the development and improvement of the leased premises. The encumbrance instrument, must be approved by the Secretary. If a sale or foreclosure under the approved encumbrance occurs and the encumbrancer is the purchaser, he may assign the leasehold without the approval of the Secretary or the consent of the other parties to the lease, provided, however, that the assignee accepts and agrees in writing to be bound by all the terms and conditions of the lease. If the purchaser is a party other than the encumbrancer, approval by the Secretary of any assignment will be required, and such purchaser will be bound by the terms of the lease and will assume in writing all the obligations thereunder.

(d) With the consent of the Secretary, leases of tribal land to individual members of the tribe or to tribal housing authorities may contain provisions permitting the assignment of the lease without further consent or approval where a lending institution or an agency of the United States makes, insures or guarantees a loan to an individual member of the tribe or to a tribal housing authority for the purpose of providing funds for the construction of housing for Indians on the leased premises; provided, the leasehold has been pledged as security for the loan and the lender has obtained the leasehold by foreclosure or otherwise. Such leases may with the consent of the Secretary also contain provisions permitting the lessee to assign the lease without further consent or approval.

[26 FR 10966, Nov. 23, 1961, as amended at 29 FR 2542, Feb. 18, 1964]

§ 131.13 Payment of fees and drainage and irrigation charges.

(a) Except as provided in Part 221 of this chapter, any lease covering lands within an irrigation project or drainage district shall require the lessee to pay annually on or before the due date, during the term of the lease and in the amounts determined, all charges assessed against such lands. Such charges shall be in addition to the rental payments prescribed in the lease. All payments of such charges and penalties shall be made to the official designated in the lease to receive such payments.

(b) Unless otherwise provided in this part or by the Secretary, fees based upon the annual rental payable under the lease shall be collected on each lease, sublease, assignment, transfer, renewal, extension, modification, or other instrument issued in connection with the leasing or permitting of restricted lands under the regulations in this part.

(1) Except where all or any part of the expenses of the work are paid from tribal funds, in which event an additional or alternate schedule of fees may be established subject to the approval of the Secretary, the fee to be paid shall be as follows:

Rental	*Percent*
On the first $500	3
On the next $4,500	2
On all rental above $5,000	1

In no event shall the fee be less than $2.00 nor exceed $250.

(2) In the case of percentage rental leases, the fee shall be calculated on the basis of the guaranteed minimum rental. Where rental consists of a stated annual cash rental in addition to a percentage rental, the estimated revenue anticipated from the percentage rental shall be mutually agreed upon solely for the purpose of fixing the fee. The fee to be collected in case of crop-share or other special consideration leases or permits shall be based on an estimate of the cash rental value of the acreage, or the estimated value of the lessor's share of the crops. No fees so collected shall be refunded.

§ 131.14 Violation of lease.

Upon a showing satisfactory to the Secretary that there has been a violation of the lease or the regulations in this part, the lessee shall be served with written notice setting forth in detail the nature of the alleged violation and allowing him ten days from the date of receipt of notice in which to show cause why the lease should not be cancelled. The surety or sureties shall be sent a copy of each such notice. If within the ten-day period, it is determined that the breach may be corrected and the lessee agrees to take the necessary corrective measures, he will be given an opportunity to carry

out such measures and shall be given a reasonable time within which to take corrective action to cure the breach. If the lessee fails within such reasonable time to correct the breach or to furnish satisfactory reasons why the lease should not be cancelled, the lessee shall forthwith be notified in writing of the cancellation of the lease and demands shall be made for payment of all obligations and for possession of the premises. The notice of cancellation shall inform the lessee of his right to appeal pursuant to Part 2 of this chapter. Where breach of contract can be satisfied by the payment of damages, the Secretary may approve the damage settlement between the parties to the lease, or where the Secretary has granted the lease, he may accept the damage settlement. With the consent of the Secretary, leases of tribal land to individual members of the tribe or to tribal housing authorities for the purpose of providing lands on which housing for Indians is to be constructed, may contain a provision prohibiting the cancellation or termination of the lease during the period that a loan, loan insurance, or loan guarantee is in effect without the approval of the lender or the agency of the United States which has made, insured or guaranteed the loan for the construction of housing on the leased premises.

[29 FR 2542, Feb. 18, 1964]

§ 131.15 Crow Reservation.

(a) Notwithstanding the regulations in other sections of this Part 131, Crow Indians classified as competent under the Act of June 4, 1920 (41 Stat. 751), as amended, may lease their trust lands and the trust lands of their minor children for farming or grazing purposes without the approval of the Secretary pursuant to the Act of May 26, 1926 (44 Stat. 658), as amended by the Act of March 15, 1948 (62 Stat. 80). However, at their election Crow Indians classified as competent may authorize the Secretary to lease, or assist in the leasing of such lands, and an appropriate notice of such action shall be made a matter of record. When this prerogative is exercised, the general regulations contained in this Part 131 shall be applicable. Approval of the Secretary is required on leases signed by Crow Indians not classified as competent or made on inherited or devised trust lands owned by more than five competent devisees or heirs.

(b) The Act of May 26, 1926 (44 Stat. 658), as amended by the Act of March 15, 1948 (62 Stat. 80), provides that no lease for farming or grazing purposes shall be made for a period longer than five years, except irrigable lands under the Big Horn Canal; which may be leased for periods of ten years. No such lease shall provide the essee a preference right to future leases which, if exercised, would thereby extend the total period of encumbrance beyond the five or ten years authorized by law.

(c) All leases entered into by Crow Indians classified as competent, under the above-cited special statutes, must be recorded at the Crow Agency. Such recording shall constitute notice to all persons. Under these special statutes, Crow Indians classified as competent are free to lease their property within certain limitations. The five-year (ten-year in the case of lands under the Big Horn Canal) limitation is intended to afford a protection to the Indians. The essence of this protection is the right to deal with the property free, clear, and unencumbered at intervals at least as frequent as those provided by law. If lessees are able to obtain new leases long before the termination of existing leases, they are in a position to set their own terms. In these circumstances lessees could perpetuate their leaseholds and the protection of the statutory limitations as to terms would be destroyed. Therefore, in implementation of the foregoing interpretation, any lease which, on its face, is in violation of statutory limitations or requirements, and any grazing lease executed more than 12 months, and any farming lease executed more than 18 months, prior to the commencement of the term thereof or any lease which purports to cancel an existing lease with the same lessee as of a future date and take effect upon such cancellation will not be recorded. Under a Crow tribal program, approved by the Department of the Interior, competent Crow Indians may, under certain

circumstances, enter into agreements which require that, for a specified term, their leases be approved. Information concerning whether a competent Crow Indian has executed such an instrument is available at the office of the Superintendent of the Crow Agency, Bureau of Indian Affairs, Crow Agency, Montana. Any lease entered into with a competent Crow Indian during the time such instrument is in effect and which is not in accordance with such instrument will be returned without recordation.

(d) Where any of the following conditions are found to exist, leases will be recorded but the lessee and lessor will be notified upon discovery of the condition: (1) The lease in single or counterpart form has not been executed by all owners of the land described in the lease, (2) there is, of record, a lease on the land for all or a part of the same term, (3) the lease does not contain stipulations requiring sound land utilization plans and conservation practices, or (4) there are other deficiencies such as, but not limited to, erroneous land descriptions, and alterations which are not clearly endorsed by the lessor.

(e) Any adult Crow Indian classified as competent shall have the full responsibility for obtaining compliance with the terms of any lease made by him pursuant to this section. This shall not preclude action by the Secretary to assure conservation and protection of these trust lands.

(f) Leases made by competent Crow Indians shall be subject to the right to issue permits and leases to prospect for, develop, and mine oil, gas, and other minerals, and to grant rights-of-way and easements, in accordance with applicable law and regulations. In the issuance or granting of such permits, leases, rights-of-way or easements due consideration will be given to the interests of lessees and to the adjustment of any damages to such interests. In the event of a dispute as to the amount of such damage, the matter will be referred to the Secretary whose determination will be final as to the amount of said damage.

[29 FR 473, Jan. 18, 1964]

§ 131.16 Fort Belknap Reservation.

Not to exceed 20,000 acres of allotted and tribal lands (nonirrigable as well as irrigable) on the Fort Belknap Reservation in Montana may be leased for the culture of sugar beets and other crops in rotation for terms not exceeding 10 years.

§ 131.17 Cabazon, Augustine, and Torres-Martinez Reservations, California.

(a) Upon a determination by the Secretary that the owner or owners are not making beneficial use thereof, restricted lands on the Cabazon, Augustine, and Torres-Martinez Indian Reservations which are or may be irrigated from distribution facilities administered by the Coachella Valley County Water District in Riverside County, California, may be leased by the Secretary in accordance with the regulations in this part for the benefit of the owner or owners.

(b) All leases granted or approved on restricted lands of the Cabazon, Augustine, and Torres-Martinez Indian Reservations shall be filed for record in the office of the country recorder of the county in which the land is located, the cost thereof to be paid by the lessee. A copy of each such lease shall be filed by the lessee with the Coachella Valley County Water District or such other irrigation or water district within which the leased lands are located. All such leases shall include a provision that the lessee, in addition to the rentals provided for in the lease, shall pay all irrigation charges properly assessed against the land which became payable during the term of the lease. Act of August 25, 1950 (64 Stat. 470); Act of August 28, 1958 (72 Stat. 968).

§ 131.18 Colorado River Reservation.

The Act of April 30, 1964 (78 Stat. 188), fixed the beneficial ownership of the Colorado River Reservation in the Colorado River Indian Tribes of the Colorado River Reservation and authorized the Secretary of the Interior to approve leases of said lands for such uses and terms as are authorized by the Act of August 9, 1955 (69 Stat. 539), as amended (25 U.S.C. 415, et seq.), including the same uses and terms as are permitted thereby on the

Agua Caliente (Palm Springs), Dania, Navajo, and Southern Ute Reservations. Regulations in this Part 131 govern leasing under the Act of August 9, 1955. Therefore, Part 131 shall also govern the leasing of lands on the Colorado River Reservation: *Provided, however,* That application of this Part 131 shall not extend to any lands lying west of the present course of the Colorado River and south of sec. 12 of T. 5 S., R. 23 E., San Bernardino base and meridian in California and shall not be construed to affect the resolution of any controversy over the location of the boundary of the Colorado River Reservation; *Provided further,* That any of the described lands in California shall be subject to the provisions of this Part 131 when and if determined to be within the reservation.

[30 FR 14156, Nov. 10, 1965, as amended at 35 FR 18051, Nov. 25, 1970]

§ 131.19 Grazing units excepted.

Tribal or individually owned lands within range units established pursuant to Part 151 of this chapter, general grazing regulations, shall not be leased and permits respecting such lands shall not be issued under this part.

§ 131.20 San Xavier and Salt River Pima-Maricopa Reservations.

(a) *Purpose and scope.* The Act of November 2, 1966 (80 Stat. 1112), provides statutory authority for long-term leasing on the San Xavier and Salt River Pima-Maricopa Reservations, Ariz., in addition to that contained in the Act of August 9, 1955 (69 Stat. 539), as amended (25 U.S.C. 415). When leases are made under the 1955 Act on the San Xavier or Salt River Pima-Maricopa Reservations, the regulations in §§ 131.1 through 131.14 and in § 131.19 apply. The purpose of this § 131.20 is to provide regulations for implementation of the 1966 Act. The 1966 Act does not apply to leases made for purposes that are subject to the laws governing mining leases on Indian lands.

(b) *Duration of leases.* Leases made under the 1966 Act for public, religious, educational, recreational, residential, or business purposes may be made for terms of not to exceed 99 years. The terms of a grazing lease shall not exceed 10 years; the term of a farming lease that does not require the making of a substantial investment in the improvement of the land shall not exceed 10 years; and the term of a farming lease that requires the making of a substantial investment in the improvement of the land shall not exceed 40 years. No lease shall contain an option to renew which extends the total term beyond the maximum term permitted by this section.

(c) *Required covenant and enforcement thereof.* Every lease under the 1966 Act shall contain a covenant on the part of the lessee that he will not commit or permit on the leased land any act that causes waste or a nuisance or which creates a hazard to health of persons or to property wherever such persons or property may be.

(d) *Notification regarding leasing proposals.* If the Secretary determines that a proposed lease to be made under the 1966 Act for public, religious, educational, recreational, residential, or business purposes will substantially affect the governmental interests of a municipality contiguous to the San Xavier Reservation or the Salt River Pima-Maricopa Reservation, as the case may be, he shall notify the appropriate authority of such municipality of the pendency of the proposed lease. The Secretary may, in his discretion, furnish such municipality with an outline of the major provisions of the lease which affect its governmental interests and shall consider any comments on the terms of the lease affecting the municipality or on the absence of such terms from the lease that the authorities may offer. The notice to the authorities of the municipality shall set forth a reasonable period, not to exceed 30 days, within which any such comments shall be submitted.

(e) *Applicability of other regulations.* The regulations of §§ 131.1 through 131.14 and in § 131.19 shall apply to leases made under the 1966 Act except where such regulations are inconsistent with this § 131.20.

(f) *Mission San Xavier del Bac.* Nothing in the 1966 Act authorizes de-

velopment that would detract from the scenic, historic, and religious values of the Mission San Xavier del Bac owned by the Franciscan Order of Friars Minor and located on the San Xavier Reservation.

[33 FR 14641, Oct. 1, 1968]

PART 132—PRESERVATION OF ANTIQUITIES

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132.1 Penalty.
132.2 Permits.
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132.4 [Reserved]
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132.7 Notice to public.
132.8 Report of violations.
132.9 Report on objects of antiquity.

AUTHORITY: Secs. 3, 4, 34 Stat. 225, as amended; 16 U.S.C. 432.

SOURCE: 22 FR 10570, Dec. 24, 1957, unless otherwise noted.

CROSS REFERENCE: For uniform regulations issued by the Secretaries of the Interior, Agriculture, and Army pertaining to the preservation of antiquities, see Public Lands; Interior, 43 CFR Part 3.

§ 132.1 Penalty.

The appropriation, excavation, injury, or destruction of any historic or prehistoric ruin or monument, or any object of antiquity situated on lands owned or controlled by the Government of the United States, by any person or persons, without the permission of the Secretary of the department having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, subject such person or persons to be fined not to exceed $500 or imprisoned for not to exceed 90 days, or both.

§ 132.2 Permits.

The Departmental Consulting Archeologist may grant permits for the examination of ruins, the excavation of archeological sites, and the gathering of objects of antiquity on Indian tribal lands or on individually owned trust or restricted Indian lands. Permit application forms may be obtained from the Departmental Consulting Archeologist, National Park Service, Interior Building, Washington, D.C. 20240. Completed applications should be directed to the Departmental Consulting Archeologist who will grant permits to reputable museums, universities, colleges or other recognized scientific or educational institutions, or to their duly authorized agents, subject to the regulations in this Part and 43 CFR Part 3. Copies of these regulations will be attached to the permit. Permits may be granted only after obtaining the consent of the Indian landowners, who may impose special conditions for inclusion in the permit, and the concurrence of the Bureau of Indian Affairs official having immediate jurisdiction over the property. Said Bureau official should not permit any excavation or explorations except as granted to the holders of permits.

[38 FR 18547, July 12, 1973]

§ 132.3 Supervision.

Superintendents may at all times examine the permit of any person or institution claiming the privileges referred to, and may fully examine all work done under such permit.

§ 132.4 [Reserved]

§ 132.5 Restoration of land after work completed.

After the work is completed, institutions and persons receiving permits for excavation shall restore the lands upon which they have worked to their customary condition, to the satisfaction of the Indian owners and the Bureau of Indian Affairs official having immediate jurisdiction over said lands.

[38 FR 18548, July 12, 1973]

§ 132.6 Superintendents authorized to confiscate antiquities illegally obtained or possessed.

Superintendents or others in administrative charge of reservations are hereby directed and authorized to confiscate any antiquities that may have been illegally obtained or that may now be illegally in the possession of licensed Indian traders or others and to

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submit a report and description of the articles confiscated and request instructions as to their disposition.

NOTE: This section prescribed to carry out provisions of 43 CFR 3.16.

§ 132.7 Notice to public.

Copies of the act of June 8, 1906 (34 Stat. 225), and the interdepartmental regulations of December 28, 1906 (43 CFR Part 3), shall be posted conspicuously at all agency offices where the need is justified, and warning notices posted on the reservations and at or near the ruins or other articles to be protected. All licensed traders shall be notified immediately that failure to cease traffic in antiquities will result in a revocation of their license.

NOTE: This section prescribed to carry out provisions of 43 CFR 3.16.

§ 132.8 Report of violations.

Any and all violations of the regulations in this part should be reported to the Bureau of Indian Affairs immediately.

NOTE: This section prescribed to carry out provisions of 43 CFR 3.16.

§ 132.9 Report on objects of antiquity.

Superintendents shall from time to time inquire and report as to the existence, on or near their reservations, of ruins, and archaeological sites, historic or prehistoric ruins, or monument, historic landmarks and prehistoric structures, and other objects of antiquity.

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SUBCHAPTER M—FORESTRY

PART 141—GENERAL FOREST REGULATIONS

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AUTHORITY: Secs. 7, 8, 36 Stat. 857, 25 U.S.C. 406, 407; and sec. 6, 48 Stat. 986, 25 U.S.C. 466; 47 Stat. 1417, 25 U.S.C. 413. § 141.23 issued under 5 U.S.C. 301, 25 U.S.C. 2, unless otherwise noted.

CROSS REFERENCES: For rights-of-way, see Part 161 of this chapter. For sale of forest products, Red Lake Indian Reservation, Minnesota, see Part 144 of this chapter. For sale of lumber and other forest products produced by Indian enterprises from other reservations, see Part 142 of this chapter. For wilderness and roadless areas, see Part 163 of this chapter. For law and order, see Part 11 of this chapter.

§ 141.1 Definitions.

As used in this part:

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Indian forest lands" means lands held in trust by the United States for Indian tribes or individual Indians or owned by such tribes or individuals subject to restrictions against alienation, that are considered to be chiefly valuable for the production of forest crops, or on which it is considered that a forest cover should be maintained in order to protect watershed or other values. A formal inspection and land classification action is not required before applying the provisions of this Part 141 to the management of any particular tract of land.

(c) "Stumpage value" means the value of uncut timber as it stands in the woods.

(d) "Stumpage rate" means the stumpage value per thousand board feet or other unit of measure.

[24 FR 7870, Sept. 30, 1959, as amended at 27 FR 12929, Dec. 29, 1962]

§ 141.2 Scope.

The regulations in this part are applicable to all Indian forest lands except as this part may be superseded by special legislation.

[24 FR 7870, Sept. 30, 1959]

§ 141.3 Objectives.

(a) The following objectives are to be sought in the management of unallotted Indian forest lands in accordance with the principles of sustained yield:

(1) The preservation of such lands in a perpetually productive state by providing effective protection, by applying sound silvicultural and economic principles to the harvesting of the timber, and by making adequate provision for new forest growth as the timber is removed.

(2) The regulation of the cut in a manner which will insure method and order in harvesting the tree capital, so as to make possible continuous production and a perpetual forest business.

(3) The development of Indian forests by the Indian people for the purpose of promoting self-sustaining communities, to the end that the Indians may receive from their own property not only the stumpage value, but also the benefit of whatever profit it is capable of yielding and whatever labor the Indians are qualified to perform.

(4) The sale of Indian timber in open competitive markets in accordance

with good business practices on reservations where the volume that should be harvested annually is in excess of that which is being developed by the Indians.

(5) The preservation of the forest in its natural state wherever it is considered, and the authorized Indian representatives agree, that the recreational or aesthetic value of the forest to the Indians exceeds its value for the production of forest products.

(6) The management of the forest in such a manner as to retain its beneficial effects in regulating water runoff and minimizing erosion.

(7) The preservation and development of grazing, wildlife, and other values of the forest to the extent that such action is in the best interest of the Indians.

(b) Similar objectives are sought in the management of allotted Indian forest lands, but, in addition, the sales of timber shall be based upon a consideration of the needs and best interests of the Indian owner and his heirs. The Secretary shall take into consideration, among other things:

(1) The state of growth of the timber and the need for maintaining the productive capacity of the land for the benefit of the owner and his heirs.

(2) The highest and best use of the land, including the advisability of devoting it to other uses for the benefit of the owner and his heirs.

(3) The present and future financial needs of the owner and his heirs.

[29 FR 14740, Oct. 29, 1964]

§ 141.4 Sustained-yield management.

In accordance with the objectives set forth in § 141.3, the harvest of timber from Indian forest lands will not be authorized until there have been prescribed practical methods of cutting, based on sound silvicultural principles. Cutting schedules shall be directed toward the salvage of timber that is deteriorating as a result of fire damage, insect infestation, disease, over-maturity or other cause; and toward achieving an approximate balance between maximum net growth and harvest during each cutting cycle. For all Indian reservations of major importance from an industrial forestry standpoint, management plans for the forest resource shall be prepared by the Bureau of Indian Affairs, and revised as needed. The plans shall contain a statement of the manner in which the policies of the Bureau of Indian Affairs are to be applied on the forest, with a definite plan of silvicultural management and a program of action, including a cutting schedule, for a specified period in the future.

[24 FR 7870, Sept. 30, 1959]

§ 141.5 Cutting restrictions.

Clearcutting of large contiguous areas will be permitted only on lands that, when cleared, will be devoted to a more beneficial use than the growing of timber crops; but this restriction shall not prohibit clearcutting, by staggered settings or otherwise, when it is silviculturally good practice to harvest a particular stand of timber by such methods, or when it is not practicable to harvest such timber stand by methods other than clearcutting.

[24 FR 7870, Sept. 30, 1959]

§ 141.6 Indian operations.

Subject to approval by the Secretary, the following actions may be taken:

(a) Indian tribal logging or sawmill enterprises may be initiated and organized with the consent of the authorized tribal representatives.

(b) Such enterprises which do not operate under the provisions of Part 142 of this chapter shall enter into formal agreements with tribal representatives for the use of tribal timber, and with the individual Indian owners for allotted timber.

(c) Such enterprises may contract for the purchase of Indian-owned timber with the consent of the tribal representatives or the individual owners at stumpage rates established by the Secretary.

(d) Such enterprises may negotiate for the purchase of non-Indian owned timber.

(e) Performance bonds need not be required in connection with the use of timber by such enterprises.

(f) Payment for tribal timber cut by such enterprises may be authorized by methods other than those in § 141.15.

(g) Authorized officers of tribal enterprises, operating under approved agreements for the use of tribal or allotted timber pursuant to this section, may sell the forest products produced in accordance with generally accepted trade practices without compliance with section 3709 of the Revised Statutes.

[27 FR 12929, Dec. 29, 1962]

§ 141.7 Timber sales from unallotted and allotted lands.

(a) On reservations where the volume of timber available for cutting is in excess of that which is being developed by the Indians, open market sales of Indian timber will be authorized: *Provided*, That consent is given by the authorized representative of the tribe for tribal timber and by the owners of a majority Indian interest in trust or restricted timber on allotted lands. The consent of the Secretary is required in all cases.

(b) The Secretary may sell the timber on any Indian land held under a trust or other patent containing restrictions on alienations without the consent of the owners when in his judgment such action is necessary to prevent loss of values resulting from fire, insects, disease, windthrow, or other catastrophes.

(c) Unless otherwise authorized by the Secretary, sales from unallotted lands, allotted lands, or a combination of these two ownerships having a stumpage value exceeding $2,500 will not be approved until an examination of the timber to be sold has been made by a qualified forest officer and a report setting forth all pertinent information has been submitted to the officer authorized to approve the contract as provided in § 141.13. In all such sales of timber exceeding $2,500 in value, the timber shall be appraised and sold at not less than its appraised value.

[38 FR 24638, Sept. 10, 1973]

§ 141.8 Advertisement of sales.

Except as provided in §§ 141.6, 141.9, and 141.19, sales of timber shall be made only after advertising.

(a) The advertisement shall be approved by the officer who will approve the contract. Advertised sales shall be made under sealed bids, or at public auction, or under a combination thereof. The advertisement may limit sales of Indian timber to members of the tribe, or may grant to members of the tribe who submitted bids the right to meet the higher bid of a non-Indian. If the estimated stumpage value of the timber offered does not exceed $1,000, the advertisement may be made by posters and circular letters. If the estimated stumpage value exceeds $1,000, the advertisement shall also be made in at least one edition of a newspaper of general circulation in the locality where the timber is situated. If the estimated stumpage value does not exceed $10,000, the advertisement shall be for not less than 15 days; if the estimated stumpage value exceeds $10,000 but not $100,000, for not less than 30 days; and if the estimated stumpage value exceeds $100,000, for not less than 60 days.

(b) The approving officer may reduce the advertising period because of emergencies such as fire, beetle attack, blowdown, limitation of time, or when there would be no practical advantage in advertising for the prescribed periods.

(c) If no contract is executed after such advertisement, the approving officer may, within 1 year from the last day on which bids were to be received as defined in the advertisement, permit the sale of such timber in the open market upon the terms and conditions in the advertisement and at not less than the advertised value or the appraised value at the time of sale, whichever is greater.

[24 FR 7870, Sept. 30, 1959, as amended at 27 FR 12929, Dec. 29, 1962]

§ 141.9 Timber sales without advertisement.

Sales of timber may be made without advertisement with the consent of the authorized representative of the tribe for tribal timber or with the consent of the owners of a majority Indian interest in trust or restricted timber on allotted lands, and the approval of the Secretary: (a) To Indians or non-Indians when the timber is to be cut in conjunction with the granting of a right-of-way or authorized oc-

cupancy, or must be cut to protect the forest from injury, or if it is impractical to secure competition by formal advertising procedures, or when otherwise specifically authorized by statutes or regulations; or (b) To Indians who are members of the tribe for stumpage value not exceeding $10,000. Such contracts shall not be made for a longer term than 2 years. The stumpage rates in connection with such sales shall be established by the approving officer after due appraisal procedure. Timber contract forms executed under authority hereof shall be those stipulated for the sale of timber under § 141.12, and shall carry the bond requirement stipulated in § 141.14. No more than one such sale without advertisement may be made to any person or operating group of persons in any 1 calendar year. In the case of each negotiated transaction the approving officer shall establish a documented record of the transaction, including a written determination and finding that the transaction is of a type or class allowing the negotiation procedures or warranting departure from the procedures provided in § 141.8, the extent of solicitation and competition, or a statement of the facts upon which a finding of impracticability of securing competition is based; and a statement of the factors on which the award is based, including a determination as to the reasonability of the price accepted.

[38 FR 24638, Sept. 10, 1973]

§ 141.10 Deposit with bid.

(a) A deposit shall be made with each proposal for the purchase of either allotted or unallotted Indian timber. Such deposits shall be at least 20 percent if the appraised stumpage value is less than $10,000, at least 10 percent if the appraised stumpage value is between $10,000 and $100,000, but in any event not less than $2,000; at least 5 percent if the appraised stumpage value is between $100,000 and $250,000, but in any event not less than $10,000; and at least 3 percent if the appraised stumpage value exceeds $250,000, but in any event not less than $12,500.

(b) Deposits shall be in the form of either a certified check, cashier's check, bank draft, or postal money order, drawn payable to the order of the Bureau of Indian Affairs, or in cash.

(c) The deposit of the apparent high bidder, and of others who submit written requests to have their bids considered for acceptance, will be retained pending acceptance or rejection of the bids. All other deposits will be returned promptly following the opening and posting of bids.

(d) The deposit of the successful bidder will be retained as liquidated damages if the bidder does not execute the contract, and furnish the performance bond required by § 141.14, within the time stipulated in the advertisement of timber sale.

[24 FR 7871, Sept. 30, 1959]

§ 141.11 Acceptance and rejection of bids.

(a) Applicants or bidders may be individuals, associations of individuals, or corporations. In ordinary circumstances the high bid received in connection with any advertisement issued under authority of this part shall be accepted. However, the approving officer, having set forth his reasons in writing shall have the right to reject the high bid:

(1) If he considers the high bidder to be unqualified to fulfill the contractual requirement of the advertisement, or

(2) If he has reasonable grounds to consider it in the interest of the Indians to reject the high bid.

(b) If the high bid is rejected, the approving officer may authorize:

(1) Rejection of all bids, or

(2) Acceptance of the offer of another bidder who, at the time of opening of bids, makes formal request that his bid be so considered.

(c) The officer authorized to accept the bid is also authorized in his discretion to waive minor technical defects in advertisements and proposals.

[24 FR 7871, Sept. 30, 1959]

§ 141.12 Contracts required.

Except as provided in § 141.19(c), in sales of timber with an appraised stumpage value exceeding $2,500 the contract forms approved by the Secretary must be used unless a special

form for a particular sale or class of sales is approved by the Secretary. The approved forms provide flexibility to meet variable conditions, but essential departures from the fundamental requirements of such contracts shall be made only with the approval of the Secretary. Unless otherwise directed, the contracts shall require that the proceeds be paid by remittance drawn to the Bureau of Indian Affairs and transmitted to the Superintendent. Contracts may be extended, modified, or assigned subject to approval of the approving officer, and may be terminated by the approving officer upon completion.

[38 FR 24639, Sept. 10, 1973]

§ 141.13 Execution and approval of contracts.

(a) *Contracts for the sale of tribal timber.* All contracts for the sale of tribal timber shall be executed by the authorized representative of the tribe or tribal corporation. Contracts to be valid must be approved by the Secretary. There shall be included with the contract an affidavit executed by the appropriate officer of the tribe or tribal corporation setting forth the resolution or other authority of the governing body of the tribe or tribal corporation authorizing the sale.

(b) *Contracts for the sale of allotted timber.* Contracts for the sale of allotted timber shall be executed by the Indian owners or the Secretary acting pursuant to a power of attorney from the Indian owner, subject to conditions set forth in § 141.13(b) (1), (2), and (3). Contracts to be valid must be approved by the Secretary.

(1) The Secretary shall execute contracts on behalf of minors and Indian owners who are incompetent by reason of mental incapacity after consultation with any legally appointed guardian.

(2) The Secretary shall execute contracts for those persons whose ownership in a decedent's estate has not been determined or for those persons who cannot be located after a reasonable and diligent search and the giving of notice by publication.

(3) Upon the request of the owner of an undivided but unrestricted interest in land in which there are trust or restricted Indian interests, the Secretary shall include such unrestricted interest in a sale of the trust or restricted interests in the timber, pursuant to Part 141, and perform any functions required of him by the contract of sale for both the restricted and the unrestricted interests, including the collection and disbursement of payments for timber and the deductions as service fees from such payments of sums in lieu of administrative expenses.

[29 FR 14741, Oct. 29, 1964]

§ 141.14 Bonds required.

Performance bonds will be required in connection with all sales of Indian timber, except they may or may not be required, as determined by the approving officer, in connection with the use of timber by tribal enterprises pursuant to § 141.6, or in timber cutting permits issued pursuant to § 141.19. In sales in which the estimated stumpage value, calculated at the appraised stumpage rates, does not exceed $10,000 the bond shall be approximately 20 percent of the estimated stumpage value. In sales in which the estimated stumpage value exceeds $10,000 but is not over $100,000, the bond shall be approximately 15 percent of the estimated stumpage value but not less than $2,000; in sales in which the estimated stumpage value exceeds $100,000 but is not over $250,000, the bond shall be approximately 10 percent of the estimated stumpage value but not less than $15,000; and in sales in which the estimated stumpage value exceeds $250,000, the bond shall be approximately 5 percent of the estimated stumpage value but not less than $25,000. Bonds may be in the form of a corporate surety bond by an acceptable surety company; or cash bond designating the approving officer to act under a power of attorney; or negotiable United States Government bonds supported by appropriate power of attorney and performance bond.

[27 FR 12929, Dec. 29, 1962]

§ 141.15 Payments for timber.

The basis of volume determination for timber sold shall be the Scribner Decimal C, International ¼ inch, or

International Decimal ¼ inch log rules, cubic volume, weight, or such other form of measurement as the Secretary shall designate for each sale. Payment for timber will be required in advance of cutting pursuant to § 141.16, except for Indian enterprises pursuant to § 141.6. Each advance deposit shall be at least 10 percent of the value of the minimum volume of timber required to be cut annually, figured at the appraised stumpage rates: *Provided*, That the approving officer may reduce the size of the last advance deposit before the completion of the sale or before periods of approximately 3 months or longer during which no timber cutting is anticipated. If a contract stipulates no minimum annual cutting requirements the amount of each advance deposit shall be determined by the approving officer. The advance payments that may be required in the sale of trust allotted timber, pursuant to § 141.16, shall not operate to reduce the size of advance deposits required by this section, but may postpone the necessity of requiring such deposits until the advance payments on the particular allotments being cut have been exhausted.

[27 FR 12929, Dec. 29, 1962]

§ 141.16 Advance payment for allotment timber.

Unless otherwise authorized by the Secretary, and except in the case of lump sum sales, contracts for the sale of timber from trust allotments shall provide for the payment of 25 percent of the stumpage value, calculated at the bid price, within 30 days from the date of approval and before cutting begins. Additional advance payments may be specified in contracts that are more than 3 years in duration; however, no advance payment will be required that would make the sum of such payment and of advance deposits and advance payments previously applied against timber cut from the allotment exceed 50 percent of the bid stumpage value. The advance payments shall be credited against the allotment timber as it is cut and scaled, at the stumpage rates governing at the time of scaling.

[38 FR 24639, Sept. 10, 1973]

§ 141.17 Time for cutting timber.

Unless otherwise authorized by the Secretary, the maximum period which shall be allowed, after the effective date of a timber contract, for cutting of the estimated volume of timber purchased shall be 5 years.

[24 FR 7872, Sept. 30, 1959]

§ 141.18 Deductions for administrative expenses.

In sales of timber from either allotted or unallotted lands, a reasonable deduction shall be made from the gross proceeds to cover in whole or in part the cost of managing and protecting the forest lands, including the cost of timber sale administration, but not including the costs that are paid from funds appropriated specifically for fire suppression or forest pest control. Unless special instructions have been given by the Secretary as to the amount of the deduction, or the manner in which it is to be made, there shall be deducted 10 percent of the gross amount received for timber sold under regular supervision, and 5 percent when the timber is sold in such a manner that little administrative expense by the Indian Bureau is required. Service fees in lieu of administrative deductions shall be determined in a similar manner.

(Act of April 30, 1964, 78 Stat. 186, 187)
[29 FR 14741, Oct. 29, 1964]

§ 141.19 Timber cutting permits.

(a) Except as provided in § 141.20, all timber cutting that is not done under formal contract, pursuant to § 141.12, shall be done under timber cutting permit forms approved by the Secretary. Permits will be issued only with the consent of the Indian owner or the Secretary, for allotted lands, as authorized in § 141.13(b). Such consents to the issuance of cutting permits shall stipulate the minimum stumpage rates at which timber may be sold under permit.

(b) Free-use cutting permits may be issued for specified species and types of forest products by persons authorized under § 141.13 to execute timber contracts. Timber cut under this au-

thority may be limited as to sale or exchange for other goods or services.

(c) An Indian having sole beneficial interest in an allotment may be issued an approved form of special permit to cut and sell designated timber from such allotment. The special permit shall include provision for payment by the Indian of administrative expenses pursuant to § 141.18. Unless waived by the Secretary, the permit shall also require the Indian to make a deposit with the Secretary to be returned to the Indian upon satisfactory completion of the permit or to be used by the Secretary in his discretion for planting or other work to offset damage to the land or the timber caused by the Indian's failure to comply with the provisions of the permit. As a condition to granting a special permit under authority of this paragraph, the Indian may be required to provide evidence acceptable to the Secretary that he has arranged a bona fide sale of the timber to be cut, on terms that will protect the Indian's interests. In special cases, the Secretary may authorize exceptions to the requirement of sole beneficial interest in an allotment.

(d) Permits to be valid must be approved by the Secretary. The stumpage value which may be cut in 1 calendar year by any individual under authority of paragraphs (a) and (b) of this section shall not exceed $2,500, but this limitation shall not apply to cutting under authority in paragraph (c) of this section. Essential departures from the fundamental requirements for issuance of special allotment timber cutting permits under authority of paragraph (c) of this section shall be made only with the approval of the Secretary.

[38 FR 24639, Sept. 10, 1973]

§ 141.20 Free-use cutting without permits.

(a) Timber may be cut by an Indian for his personal use from an allotment in which he holds the sole beneficial interest, without a permit or contract; but timber cut under this authority shall not be sold, or exchanged for other goods or services. Such cutting shall conform to the principles of conservative use as contemplated by § 141.4.

(b) With the consent of the authorized tribal representatives and the Secretary, Indians may cut designated types of forest products from unallotted lands without a permit or contract, and without charge. Timber cut under this authority shall be for the Indian's personal use, and shall not be sold or exchanged for other goods or services. Such cutting shall conform to the principles of conservative use as contemplated by § 141.4.

[24 FR 7872, Sept. 30, 1959]

§ 141.21 Fire protective measures.

The Secretary is authorized to hire temporary labor, rent fire fighting equipment, purchase tools and supplies, and pay for their transportation to extinguish forest or range fires. No expense for fighting a fire outside a reservation may be incurred unless the fire threatens the reservation, or unless such expense is incurred pursuant to an approved cooperative agreement with another forest protection agency. The rates of pay for fire fighters and for equipment rental shall be the rates for such fire fighting services that are currently in use by public and private forest fire protection agencies adjacent to Indian reservations on which a fire occurs, unless there are in effect at the time different rates that have been approved by the Secretary. The Secretary may enter into reciprocal agreements with any fire organizations, maintaining fire protection facilities in the vicinity of Indian reservations, for mutual aid in fire protection. This section does not apply to the rendering of emergency aid, or agreements for mutual aid, in fire protection pursuant to the act of May 27, 1959 (69 Stat. 66).

[24 FR 7872, Sept. 30, 1959]

§ 141.22 Trespass.

(a) Federal statutes provide that:

(1) Willful and unauthorized setting fire to timber, underbrush, or grass or other inflammable material upon any Indian reservation or lands belonging to or occupied by any tribe or group of Indians under authority of the United States, or upon any Indian allotment while the title to the same shall be held in trust by the Government, or

while the same shall remain inalienable by the allottee without the consent of the United States, is punishable by fine of not more than $5,000 or imprisonment of not more than 5 years, or both.

(2) Whoever, having kindled or caused to be kindled, a fire in or near any forest timber, or other inflammable material on such lands, leaves said fire without totally extinguishing it, or permits such fire to spread beyond his control or leaves such fire unattended shall be fined not more than $500 or imprisoned not more than 6 months, or both.

(3) The unlawful cutting or wanton injury or destruction of trees standing, growing, or being upon such lands is punishable by fine of not more than $1,000 or imprisonment of not more than one year, or both.

(4) Section 1 of the act of June 25, 1948 (62 Stat. 787 (18 U.S.C. 1853)) provides penalties for the unlawful cutting of timber on Government lands and on Indian lands under Government supervision.

(b) The Secretary may mark and forbid the removal of timber from restricted or trust Indian lands or direct its removal to a point of safekeeping when he has reason to believe that such timber was unlawfully cut. Any such timber that can be positively identified as Indian trust property should be sold to prevent its deterioration. When any timber cut in trespass is found to be removed to land not under Government supervision, the owner of the land should be notified that such timber is Indian trust property and any further action should be upon advice of the Office of the Solicitor of the Department of the Interior. Any timber sold under this § 141.22 may be disposed of under the provisions of this Part 141 insofar as they are applicable. The Secretary may accept payment of damages in full in the settlement of civil trespass cases without resort to court action. The Secretary may also accept a recommended settlement per Solicitor's Regulations Manual I.4.1 when exercised in accordance with regulations contained in 344 DM 3.

All other matters relating to the collection of debts under this section will be in accordance with Departmental Manual, Part 344.

(25 U.S.C. 9)

[42 FR 40194, Aug. 9, 1977]

§ 141.23 Appeals under timber contracts.

Any action taken by an approving officer exercising delegated authority from the Secretary of the Interior or by a subordinate official of the Department of the Interior exercising an authority by the terms of the contract may be appealed to the Secretary of the Interior. Such appeal shall not stay any action under the contract unless otherwise directed by the Secretary of the Interior. Appeals will be filed in accordance with any applicable general regulations covering appeals. The Secretary shall notify the appropriate Indian tribal representatives upon receipt of an appeal by the purchaser, and shall notify the purchaser upon receipt of an appeal by the seller.

[24 FR 7872, Sept. 30, 1959]

PART 142—SALE OF LUMBER AND OTHER FOREST PRODUCTS PRODUCED BY INDIAN ENTERPRISES FROM THE FORESTS ON INDIAN RESERVATIONS

Sec.

142.1 Definitions.
142.2 Purpose of regulations.
142.3 Applicability of regulations.
142.4 Sale in open market.
142.5 Advertisement in trade journals and newspapers.
142.6 Advertising, general.
142.7 Proposals for purchase.
142.8 Proposals to Government departments.
142.9 Cash sales.
142.10 Payments, discounts, and credit sales.
142.11 Commission sales agents.
142.12 Deposits.

AUTHORITY: 54 Stat. 504, as amended; 5 U.S.C. 301, 41 U.S.C. 6b.

SOURCE: 27 FR 12929, Dec. 29, 1962, unless otherwise noted.

§ 142.1 Definitions.

As used in this part:

(a) "Secretary" means Secretary of the Interior or his authorized representative.

(b) "Forest products" means lumber, lath, shingles, crating, ties, bolts, logs, bark, pulpwood, or other marketable materials obtained from forests and authorized for removal by the Indian enterprises.

§ 142.2 Purpose of regulations.

The regulations in this Part 142 prescribe the terms and conditions under which forest products produced by Indian tribal enterprises from the forests of Indian reservations may be sold without compliance with section 3709 of the Revised Statutes.

§ 142.3 Applicability of regulations.

The regulations in this Part 142 are intended to be generally applicable except that they shall not apply to the Red Lake Reservation in Minnesota; or, as may be determined by the Secretary, to Indian enterprises that have entered into approved agreements for the use of tribal or allotted timber pursuant to § 141.6 of this chapter.

§ 142.4 Sale in open market.

The forest products obtained from the forests on Indian reservations by Indian enterprises may be sold in the open market at such prices as may be realized through the methods provided in this Part 142.

§ 142.5 Advertisement in trade journals and newspapers.

Forest products obtained from Indian reservation forests by Indian enterprises, may be advertised for sale in lumber trade journals of general circulation among persons, companies, or corporations interested in the buying and selling of forest products, and in newspapers in cities that may afford a favorable market for such forest products.

§ 142.6 Advertising, general.

Advertisement of forest products may also be made by circular letters and through personal interviews with the trade: *Provided*, That the travel expense incident thereto shall not be incurred without specific authority from the Secretary.

§ 142.7 Proposals for purchase.

Proposals for the purchase of forest products may be made to the Secretary, and he is authorized to quote prices and consummate sales at such times and/or such terms as are consistent with the regulations of this Part 142.

§ 142.8 Proposals to Government departments.

Proposals to sell may be made to municipalities, counties, states, or the United States and prices may be quoted to such agencies. Terms and payment in connection with such sales may be formulated in accordance with the general practice of such agencies.

§ 142.9 Cash sales.

All forest products of Indian forest enterprises shall be sold for cash f.o.b. mill or other point of delivery, except as provided in §§ 142.8 and 142.10. Adjustments and allowances on shipments of forest products after delivery to the buyer are authorized in accordance with generally accepted trade practices when such adjustments are essential by reason of off-grade shipments or errors in volume.

§ 142.10 Payments, discounts, and credit sales.

Shipments of forest products on open account shall be made only to persons or companies who have an acceptable credit rating. Credit on shipments of forest products sold on open account must not be extended beyond 60 days from date of receipt by the buyer. A cash discount in accordance with general trade practice and usually not exceeding two percent of mill value, may be allowed when the shipment is paid for within ten days of receipt by the consignee as evidenced by the original paid freight bill or other acceptable evidence.

§ 142.11 Commission sales agents.

Sales may be made through commission sales agents, for which they may be paid a commission on f.o.b. mill value of the shipment at approved rates. Sales may be made to wholesalers on which a discount at approved rates may be allowed.

§ 142.12 Deposits.

On all agreements to purchase for future delivery a deposit may be required. Such a deposit may be forfeited if the purchaser does not comply with the terms of sale. No agreement for sale and future delivery shall be made for a longer period than 90 days, except with the approval of the Secretary.

PART 144—SALE OF FOREST PRODUCTS, RED LAKE INDIAN RESERVATION, MINN.

Sec.
144.1 Definitions.
144.2 Purpose of regulations.
144.3 Applicability of regulations.
144.4 Sale in open market.
144.5 Advertisement in trade journals and newspapers.
144.6 Advertising contracts.
144.7 General advertisement.
144.8 Proposals for purchase.
144.9 Proposals to Government departments.
144.10 Cash sales.
144.11 Payments, discounts, and credit sales.
144.12 Commission sales agents.
144.13 Deposits.
144.14 Purchase of timber by the Red Lake Indian Mills.
144.15 Appeals.

AUTHORITY: Sec. 9, 39 Stat. 137, as amended; 5 U.S.C. 301, 41 U.S.C. 6b.

SOURCE: 29 FR 4797, Apr. 4, 1964, unless otherwise noted.

CROSS REFERENCE: For General Forest Regulations, see Part 141 of this chapter.

§ 144.1 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Red Lake Indian Mills" means the tribal enterprise, established under section 9 of the act of May 18, 1916 (39 Stat. 137), as amended, for the purpose of producing forest products.

(c) "Forest Products" means lumber, lath, shingles, crating, ties, bolts, logs, bark, pulpwood, or other marketable materials manufactured or produced by the Red Lake Indian Mills.

(d) "Red Lake Indian Reservation, Minnesota" means the Red Lake Indian Forest and all other forest lands held in trust for the Red Lake Band of Chippewa Indians.

§ 144.2 Purpose of regulations.

The regulations in this Part 144 prescribe the terms and conditions under which forest products produced by the Red Lake Indian Mills may be sold without compliance with section 3709 of the Revised Statutes.

§ 144.3 Applicability of regulations.

The regulations in this Part 144 apply only to the Red Lake Indian Mills.

§ 144.4 Sale in open market.

The forest products produced by the Red Lake Indian Mills may be sold in the open market at such prices as may be realized through the methods in this Part 144.

§ 144.5 Advertisement in trade journals and newspapers.

The Secretary may advertise forest products of the Red Lake Indian Mills for sale in trade journals of general circulation among persons, companies, or corporations interested in buying and selling of forest products, and in newspapers in cities that may afford a favorable market for such forest products.

§ 144.6 Advertising contracts.

The Secretary may, as he determines, make advertising contracts, provided that such contracts shall not be executed for periods of more than one year.

§ 144.7 General advertisement.

Advertisement of forest products may also be made by direct and circular letters and through personal interviews with the trade: *Provided*, That travel expense incident thereto shall not be incurred without specific authority from the Secretary.

§ 144.8 Proposals for purchase.

Proposals for the purchase of forest products may be made to the Secretary, and he is authorized to quote prices and consummate sales at such times and/or such terms as are con-

sistent with the regulations of this Part 144.

§ 144.9 Proposals to Government departments.

Proposals may be made by the Secretary to sell to municipalities, counties, States, or the United States and prices may be quoted to such agencies. Terms and payment in connection with such sales may be formulated in accordance with the general practice of such agencies.

§ 144.10 Cash sales.

All forest products of the Red Lake Indian Mills shall be sold for cash f.o.b. mill or other point of delivery, except as provided in §§ 144.9 and 144.11. Adjustments and allowances on shipments of forest products after delivery to the buyer are authorized in accordance with generally accepted trade practices, when such adjustments are essential by reason of off-grade shipments or errors in volume.

§ 144.11 Payments, discounts, and credit sales.

Shipments of forest products on open account shall be made only to persons or companies who have an acceptable credit rating. Credit on shipment of forest products sold on open account shall not be extended beyond 60 days from date of receipt by the buyer. A cash discount in accordance with general trade practice and usually not exceeding two percent of mill value may be allowed when the shipment is paid for within ten days of receipt by the consignee as evidenced by the original paid freight bill or other acceptable evidence.

§ 144.12 Commission sales agents.

Sales may be made through commission sales agents, for which they may be paid a commission on f.o.b. mill value of the shipment at approved rates. Sales may be made to wholesalers on which a discount at approved rates may be allowed.

§ 144.13 Deposits.

On all agreements to purchase for future delivery a deposit may be required. Such a deposit may be forfeited if the purchaser does not comply with the terms of sale. No agreement for sale and future delivery shall be made for a longer period than 90 days, except with approval of the Secretary.

§ 144.14 Purchase of timber by the Red Lake Indian Mills.

The Secretary may purchase, harvest, and manufacture timber or forest products standing on or severed from lands other than the Red Lake Indian Reservation, Minnesota, at such times as it may be considered economically feasible, provided that such purchases are consistent with approved operating schedules and budget allowances and subject also to such limitations on expenditures as may be prescribed in annual appropriation acts.

§ 144.15 Appeals.

Any action taken by an approving officer exercising delegated authority from the Secretary may be appealed to the Secretary. Such appeal shall not stay any action taken unless otherwise directed by the Secretary. Appeals will be filed in accordance with applicable general regulations covering appeals appearing in this Title 25.

SUBCHAPTER N—GRAZING

PART 151—GENERAL GRAZING REGULATIONS

Sec.

151.1 Definitions.
151.2 General authority.
151.3 Objectives.
151.4 Regulations; scope; exceptions.
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151.7 Grazing on range units authorized by permit.
151.8 Grazing exempt from permit.
151.9 Authority of the Superintendent to include land in grazing permits.
151.10 Allocation of grazing privileges.
151.11 Competitive and negotiated sale of grazing privileges.
151.12 Kind of livestock.
151.13 Establishment of grazing fees.
151.14 Duration of grazing permits.
151.15 Assignment, modification, and cancellation of permits.
151.16 Conservation and land use provisions.
151.17 Range improvements; ownership.
151.18 Payment of tribal fees and taxes.
151.19 Special permit requirements and provisions.
151.20 Bonding and insurance requirements.
151.21 Payment of annual grazing fees.
151.22 Payment of preparation fees.
151.23 On-and-Off grazing privileges.
151.24 Livestock trespass.
151.25 Control of livestock diseases.

AUTHORITY: 5 U.S.C. 301; ..S. 463, 25 U.S.C. sec. 2; R.S. 465, 25 U.S.C. sec. 9; and by sec. 6, 69 Stat. 986, 25 U.S.C. 466. Interpret or apply R.S. 2078, 25 U.S.C. 68; R.S. 2117, 25 U.S.C. 179; sec. 3, 26 Stat. 795, 25 U.S.C. 397; sec. 1, 28 Stat. 305, 25 U.S.C. 402; sec. 4, 36 Stat. 856, 25 U.S.C. 403; sec. 1, 39 Stat. 128, 25 U.S.C. 394; sec. 1, 41 Stat. 1232, 25 U.S.C. 393; C. 158, 47 Stat. 1417, 25 U.S.C. 413; secs. 16, 17, 48, Stat. 987, 988, 25 U.S.C. 476, 477; C. 210, 53 Stat. 840, 25 U.S.C. 68a, 87a; C. 554, 54 Stat. 745, 25 U.S.C. 380; secs. 1, 2, 4, 5, 6, 69 Stat. 539, 540, 25 U.S.C. 415, 415a, 415b, 415c, 415d.

SOURCE: 34 FR 9383, June 14, 1969, unless otherwise noted.

CROSS REFERENCES: For Navajo grazing regulations, see Part 152 of this chapter. For leasing and permitting of restricted Indian lands for farming, farm pasture, and business, see Part 131 of this chapter.

§ 151.1 Definitions.

(a) "Tribe" means a tribe, band, community, group, or pueblo of Indians.

(b) "Governing body" means the general council or the tribal committee, board, or other membership body recognized by the Secretary as having the authority to act for the tribe, band, community, pueblo, or group of Indians.

(c) "Secretary" means the Secretary of the Interior.

(d) "Commissioner" means the Commissioner of Indian Affairs.

(e) "Area Director" means the Director of any established Area of the Bureau of Indian Affairs.

(f) "Superintendent" means the Superintendent of any Agency of the Bureau of Indian Affairs.

(g) "Individually owned land" means land or any interest therein held in trust by the United States for the benefit of individual Indians and land or any interest therein held by individual Indians subject to Federal restrictions against alienation or encumbrance.

(h) "Tribal land" means land or any interest therein held by the United States in trust for a tribe, band, community, group, or pueblo of Indians subject to Federal restrictions against alienation or encumbrance, and includes such land reserved for Indian Bureau administrative purposes when it is not immediately needed for such purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).

(i) "Government land" means land, other than tribal land, acquired or reserved by the United States for Indian Bureau administrative purposes which is not immediately needed for the purposes for which it was acquired or reserved and land transferred to or placed under the jurisdiction of the Bureau of Indian Affairs.

(j) "Range unit" means a tract of range land designated as a management unit for administration of grazing. A range unit may consist of tribal,

individually owned or Government land or any combination thereof consolidated for grazing administration.

(k) "Permit" means a revocable privilege granted in writing limited to entering on and utilizing forage by domestic livestock on a specified tract of land.

(l) "Adult tribal members," for the purposes of this part, means a member of an Indian tribe, band, community, pueblo, or group, who has attained the age of 21 years.

(m) "Immediate family" means the spouse, brothers, sisters, lineal ancestors, and descendants of an adult tribal member.

(n) "Allocation" means the apportionment of grazing privileges without competitive bidding including the determination of who may graze livestock, the number and kind of livestock, and the place such livestock will be grazed.

§ 151.2 General authority.

It is within the authority of the Secretary to protect individually owned and tribal lands against waste and to prescribe rules and regulations under which these lands may be leased or permitted for grazing. Improper use which threatens destruction of the range and soil resource is properly considered waste. With respect to reservations upon which the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), is applicable, the action of the Secretary must follow the directions in section 6 of that Act which are: "The Secretary of the Interior is directed to make rules and regulations for the operation and maintenance of Indian forestry units on the principle of sustained-yield management, to restrict the number of livestock grazed on Indian range units to the estimated carrying capacity of such ranges, and to promulgate such other rules and regulations as may be necessary to protect the range from deterioration, to prevent soil erosion, to assure full utilization of the range, and like purposes." It is also the Secretary's responsibility to improve the economic well being of the Indian people through proper and efficient resource use.

§ 151.3 Objectives.

It is the purpose of the regulations of this part to:

(a) Preserve, through proper grazing management, the land, water, forest, forage, wildlife, and recreational values on the reservations and improve and build up these resources where they have deteriorated.

(b) Promote use of the range resource by Indians to enable them to earn a living, in whole or in part, through the grazing of their own livestock.

(c) Provide for the administration of grazing privileges in a manner which will yield the highest return consistent with sustained yield land management principles and the fulfillment of the rights and objectives of tribal governing bodies and individual land owners.

§ 151.4 Regulations; scope; exceptions.

The grazing regulations of this part apply to individually owned, tribal, and Government lands under the jurisdiction of the Bureau of Indian Affairs, except as superseded by special written instructions from the Commissioner in particular instances, or by provisions of any tribal constitution, bylaws, or charter, heretofore duly ratified or approved, or by any tribal action authorized thereunder. All forms necessary to carry out the purpose of the regulations of this part shall be approved by the Commissioner. Grazing lands not in range units established under this part may be leased pursuant to Part 131 of this chapter.

§ 151.5 Establishment of range units.

The conservation, development, and effective utilization of the range resource requires consolidation of small individual and tribal ownerships and the organization of the total range area into management units. This shall be done under the direction of the Superintendent, after consultation with the Indians, in a manner which will best meet the requirements of Indian needs, land ownership status, and proper land use. Any contiguous block of Indian and Government rangeland in excess of 2,560 acres shall be designated as one or more range units. Range units smaller than 2,560 acres

may also be established under this procedure.

§ 151.6 Grazing capacity.

Subject to approval of the Area Director, the Superintendent shall prescribe the maximum number of livestock which may be grazed on each range unit and the season, or seasons, of use to achieve the objectives cited in § 151.3. The grazing capacity so prescribed will take into consideration the implementation of tribal objectives and programs requiring grazeable land to support wildlife and other nonlivestock uses. Stocking rates shall be reviewed on a continuing basis and adjusted as conditions warrant.

§ 151.7 Grazing on range units authorized by permit.

All grazing use of range units shall be authorized by a grazing permit except Indians' use of their own land pursuant to § 151.8. Permits on range units containing trust or restricted land which is entirely tribally owned, or is in combination with Government land, may be issued by the governing body, subject to approval by the Superintendent, or by the Superintendent pursuant to § 151.9 (b). The Superintendent shall issue all permits on range units containing trust or restricted land which is entirely individually owned or is in combination with tribal and or Government land.

[34 FR 9383, June 14, 1969; 34 FR 11263, July 4, 1969]

§ 151.8 Grazing exempt from permit.

Adult tribal members of any tribe may, without approval of the Superintendent, graze livestock on their own individually owned grazing land or other grazing land for which they are responsible on behalf of those non compos mentis, on behalf of their minor children and on behalf of minor children or others to whom they stand in loco parentis when such children do not have a legal representative. The term "graze livestock" means the grazing of livestock which are either owned by those persons listed above, or if not owned, are under their direct management and supervision. Grazing of livestock under any other arrangement requires approval of the Superintendent.

§ 151.9 Authority of the Superintendent to include land in grazing permits.

(a) The Superintendent may include individually owned land in grazing permits on behalf of: (1) Orphaned minors; (2) persons who are non compos mentis and without legal guardians; (3) undetermined heirs or devisees of a deceased Indian owner; (4) adults whose whereabouts are unknown; (5) heirs or devisees, none of whom are using the land and who have not been able to agree upon the permitting of their land during a 3-month period, and after notice from the Superintendent given by posting a general notice in all Post Offices on the reservation and with the tribal governing body; (6) those Indian land owners listed in § 151.8 who give the Superintendent written authority to grant grazing privileges; and (7) any other Indian minor or person who is non compos mentis or otherwise under legal disability, if that person's guardian, conservator, or other fiduciary, appointed by a State court or by a tribal court or court of Indian offenses operating under an approved constitution or law and order code, gives the Superintendent written authority to grant grazing privileges.

(b) The Superintendent may include tribal land in grazing permits on behalf of governing bodies who give written authority. When timely action is not taken by the governing body to give the Superintendent written authority, or to issue permits pursuant to § 151.7 and the criteria prescribed in § 151.10, the Superintendent may proceed to issue permits on tribal land, subject to veto of the governing body, in order to prevent resource waste or unreasonable economic loss to the tribe or its members. The Superintendent shall notify the governing body in writing of the action he proposes to take and allow a 60-day period during which the tribal veto may be exercised.

(c) The Superintendent may include Government land in grazing permits provided such land is not already under revocable permit to the tribe, in

which case, paragraph (b) of this section applies.

§ 151.10 Allocation of grazing privileges.

A tribal governing body may authorize the allocation of grazing privileges without competitive bidding on tribal and tribally controlled Government land to Indian corporations, Indian associations, and adult tribal members of the tribe represented by that governing body. The Superintendent may implement the governing body's allocation program by authorizing the allocation of grazing privileges on individually owned land. The eligibility requirements for allocations shall be prescribed by the governing body, subject to written concurrence of the Superintendent. Where timely action is not taken by the governing body to prescribe satisfactory requirements, the Superintendent shall notify it in writing that it has a 60-day period during which it may present requirements. Subject to the approval of the Area Director, the Superintendent shall prescribe the eligibility requirements after expiration of the 60-day period in the event satisfactory action is not taken by the governing body.

[34 FR 9383, June 14, 1969, as amended at 34 FR 11544, July 12, 1969]

§ 151.11 Competitive and negotiated sale of grazing privileges.

"(a) Grazing privileges not exempt from permit under § 151.8 and not reserved for allocation under § 151.10 shall be advertised for competitive public sale by the Superintendent except as otherwise provided in paragraph (b) of this section. Advertisements shall be (1) approved by the Area Director prior to publication; (2) shall be for a 30-day period unless otherwise authorized by the Area Director; (3) shall call for sealed bids; (4) may provide for oral auction subsequent to sealed bid opening at the discretion of the governing body; and (5) shall limit the privilege of meeting high sealed bids of non-Indians to adult tribal members, Indian corporations, and Indian associations, according to preferences determined by the governing body and concurred in writing by the Area Director.

(b) The Area Director may authorize the issuance of grazing permits by negotiation when in his discretion no useful purpose would be served by advertisement. Negotiated permits shall be limited to the grazing capacity established pursuant to § 151.6.

[34 FR 9383, June 14, 1969; 34 FR 11263, July 4, 1969]

§ 151.12 Kind of livestock.

(a) Tribal governing bodies may determine, subject to the grazing capacity prescribed by the Superintendent and Area Director the kind of livestock, e.g., cattle, sheep, etc., that may be grazed on range units composed entirely of tribal land or in combination with Government land.

(b) The Superintendent shall designate the same kind of livestock to be grazed on range units composed entirely of individually owned land, or in combination with tribal and or Government land, as that determined by governing bodies pursuant to paragraph (a) of this section, unless the principles of proper land management or efficient permit administration require otherwise.

§ 151.13 Establishment of grazing fees.

(a) Tribal governing bodies may determine the minimum rental rate to be charged for the use of tribal lands (1) included in advertisements for public sale and (2) by allocation, except that allocated Indian permittees shall be required to pay not less than the reservation minimum rental rate established by the Area Director pursuant to paragraph (b) of this section for all non-Indian owned livestock which they may be authorized to graze on tribal lands. Prior to these determinations, the Superintendent shall provide the tribe with all available information including appraisal data concerning the value of grazing on tribal lands.

(b) The Area Director shall establish a reservation minimum acceptable grazing rental rate. The reservation minimum rate shall apply to all grazing privileges permitted on individually owned lands, to non-Indian owned livestock which allocated permittees may be authorized to graze on tribal lands, and to all tribal lands when the

governing body fails to establish a rate pursuant to paragraph (a) of this section. Except as otherwise provided in paragraph (c) of this section, the rate established shall provide a fair annual return to the land owners.

(c) Indian landowners, in giving the Superintendent written authority to grant grazing privileges on their individually owned land, may stipulate a minimum rate above the reservation minimum set by the Area Director if justified because of above average value. They may also stipulate a lower rate than the reservation minimum, subject to approval of the Superintendent when the permittee is a member of the landowner's immediate family.

§ 151.14 Duration of grazing permits.

(a) Tribal governing bodies may determine the duration of grazing permits on range units composed entirely of tribal land or in combination with Government land, subject to a maximum period of 5 years except when substantial development or improvement is required, in which case the maximum period shall be 10 years.

(b) Subject to the same duration limits set forth in paragraph (a) of this section, the Superintendent shall prescribe the same period of duration for permits on range units composed entirely of individually owned land, or in combination with tribal and/or Government land, as that determined by governing bodies pursuant to paragraph (a) of this section unless the principles of proper land management or efficient permit administration require otherwise.

(c) Permits for a period in excess of 5 years shall provide for review of the grazing fees by the Superintendent at the end of the first 5 years and for adjustment as necessary.

§ 151.15 Assignment, modification, and cancellation of permits.

(a) Grazing permits shall not be assigned, subpermitted, or transferred without the consent of the contracting parties, including the surety, and the approval of the Superintendent.

(b) The Superintendent may revoke or withdraw all or any part of a grazing permit by cancellation or modification on 30 days' written notice for violation of the permit or because of termination of trust status of permitted land. In case of cancellation or modification because of trust termination the action shall be effected on the next annual anniversary date of the grazing permit following the date of notice.

(c) The Superintendent may revoke or withdraw all or any part of a grazing permit by cancellation or modification on 180 days' written notice for allocated Indian use or for grazing exempt from permit pursuant to § 151.8. Unless otherwise mutually agreed upon by the interested parties, such actions shall be effected on the annual anniversary date of the grazing permit following the date of notice except when such timeliness of notice is not possible, in which case deferment of the intended action shall not be required to extend beyond 180 days from the date of the notice. Rental fees for grazing privileges taken for allocation shall not be less than those paid by the preceding permittee.

§ 151.16 Conservation and land use provisions.

Grazing operations shall be conducted in accordance with recognized principles of good range management. Stipulations or management plans necessary to accomplish this may be made a part of the grazing permit.

§ 151.17 Range improvements; ownership.

Improvements placed on the permitted land shall be considered affixed to the land unless specifically excepted therefrom under the permit terms. Written permission to construct and to remove improvements must be secured from the Superintendent. The permit will specify the maximum time allowed for removal of improvements so excepted.

§ 151.18 Payment of tribal fees and taxes.

Fees and taxes exclusive of annual grazing fees, assessed by the tribe in connection with grazing permits and with the approval of the Commissioner or Secretary, shall be billed for by the tribe and paid annually in advance to the designated tribal official. Failure to make payment will subject the

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grazing permit to cancellation and may disqualify the permittee for future permits.

§ 151.19 Special permit requirements and provisions.

(a) All grazing permits shall contain the following provisions:

(1) While the lands covered by the permit are in trust or restricted status, all of the permittee's obligations under the permit and the obligation of his sureties are to the United States as well as to the owner of the land.

(2) Nothing contained in the permit shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the permit.

(3) The permittee agrees he will not use, cause, or allow to be used any part of the permitted area for any unlawful conduct or purpose.

(4) The permit authorizes the grazing of livestock only and the permittee shall not utilize the permitted area for hay cutting, hunting, post or timber cutting, or any other use without written authorization from the responsible Indian or Federal authority.

§ 151.20 Bonding and insurance requirements.

(a) A performance bond satisfactory to the Superintendent may be required in an amount that will reasonably assure performance of the contractual obligations. A bond, when required, may be for the purpose of guarantying the estimated construction cost of any improvement to be placed on the land which will become the property of the landowner or to insure compliance with special or additional contractual obligations.

(b) The permittee may be required to provide insurance in an amount adequate to protect any improvements on the permitted premises; and may also be required to furnish appropriate liability insurance and such other insurance as may be necessary to protect the landowner's interest.

§ 151.21 Payment of annual grazing fees.

Annual grazing fees for all grazing permits shall be paid in advance and the date due shall be a provision of the permit. Payment shall be made to the Bureau of Indian Affairs unless otherwise provided by the permit.

§ 151.22 Payment of preparation fees.

Permittees shall pay annually in advance the following fee, in addition to the grazing fee, to cover the cost of work performed in the preparation of grazing permits: *Provided*, That where all or any part of the expenses of the work are paid from tribal funds an alternate schedule of fees may be approved by the Commissioner:

Annual grazing fee	
Preparation fee	*(percent)*
On the first $500	3
On the next $4,500	2
On all above $5,000	1

In no event shall the fee be less than $2 nor exceed $250.

§ 151.23 On-and-off grazing privileges.

The permittee may be allowed credit for the grazing capacity of other range lands not covered by the permit but which are owned or controlled by him and grazed in common with the permitted lands as a part of the range unit. The grazing capacity will be determined by the Superintendent and shown on the grazing permit.

§ 151.24 Livestock trespass.

The owner of any livestock grazing in trespass on restricted or trust Indian lands is liable to a penalty of $1 per head for each animal thereof for each day of trespass, together with the reasonable value of the forage consumed and damages to property injured or destroyed. The Superintendent shall take action to collect all such penalties and damages and seek injunctive relief when appropriate. All payments for such penalties and damages shall be credited to the landowners where the trespass occurs. The following acts are prohibited:

(a) The grazing upon or driving across any individually owned, tribal, or Government lands of any livestock without an approved grazing or crossing permit.

(b) Allowing livestock to drift and graze on restricted or trust Indian lands without an approved permit.

(c) The grazing of livestock upon restricted or trust Indian lands within an area closed to grazing of that class of livestock.

(d) The grazing of livestock by permittee upon an area of restricted or trust Indian lands withdrawn from use for grazing purposes to protect it from damage by reason of the improper handling of the livestock, after the receipt of notice from the Superintendent of such withdrawal, or refusal to remove livestock upon instructions from the Superintendent when an injury is being done to the Indian lands by reason of improper handling of livestock.

§ 151.25 Control of livestock diseases.

Whenever livestock on Indian lands become infected with contagious or infectious diseases, or have been exposed thereto, such livestock must be treated and the movement thereof restricted in accordance with applicable Federal and State laws and tribal ordinances.

PART 152—NAVAJO GRAZING REGULATIONS

Sec.

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AUTHORITY: R.S. 465, 2117, as amended, sec. 3, 26 Stat. 795, sec. 1, 28 Stat. 305, as amended; 25 U.S.C. 9, 179, 397, 345, 402.

SOURCE: 22 FR 10578, Dec. 24, 1957, unless otherwise noted.

§ 152.1 Authority.

It is within the authority of the Secretary of the Interior to protect Indian tribal lands against waste. Subject to regulations of this part, the right exists for Indian tribes to authorize the granting of permits upon their tribal lands and to prescribe by appropriate tribal action the conditions under which their lands may be used.

§ 152.2 General regulations.

Part 151 of this subchapter authorizes the Commissioner of Indian Affairs to regulate the grazing of livestock on Indian lands under conditions set forth therein. In accordance with this authority and that of the Navajo Tribal Council, the Central Grazing Committee and the District Grazing Committees, the grazing of livestock on the Navajo Reservation shall be governed by the regulations in this part.

§ 152.3 Objectives.

It is the purpose of the regulations in this part to aid the Navajo Indians in achievement of the following objectives:

(a) The preservation of the forage, the land, and the water resources on the Navajo Reservation, and the building up of those resources where they have deteriorated.

(b) The protection of the interests of the Navajo Indians from the encroachment of unduly aggressive and antisocial individuals who may or may not be members of the Navajo Tribe.

(c) The adjustment of livestock numbers to the carrying capacity of the range in such a manner that the livestock economy of the Navajo Tribe will be preserved.

(d) To secure increasing responsibility and participation of the Navajo people, including tribal participation in all basic policy decisions, in the sound management of one of the Tribe's greatest assets, its grazing lands, and to foster a better relationship and a clearer understanding between the Navajo people and the Federal Government in carrying out the grazing regulations.

(e) The improvement of livestock through proper breeding practices and the maintenance of a sound culling policy. Buck and bull pastures may be established and maintained either on or off the reservation through District

Grazing Committee and Central Grazing Committee action.

§ 152.4 Regulations; scope; exceptions.

The grazing regulations in this part apply to all lands within the boundaries of the Navajo Reservation held in trust by the United States for the Navajo Tribe and all the trust lands hereafter added to the Navajo Reservation. The regulations in this part do not apply to any of the area described in the Executive order of December 16, 1882, to individually owned allotted lands within the Navajo Reservation nor to tribal purchases, allotted or privately owned Navajo Indian lands outside the exterior boundaries of the Navajo Reservation.

[34 FR 14599, Sept. 19, 1969]

§ 152.5 Land management districts.

The Commissioner of Indian Affairs has established and will retain the present land management districts within the Navajo Indian Reservation, based on the social and economic requirements of the Navajo Indians and the necessity of rehabilitating the grazing lands. District boundary changes may be made when deemed necessary and advisable by the District Grazing Committees, Central Grazing Committee and Tribal Council, with approval by the Superintendent, Area Director, and the Commissioner of Indian Affairs.

§ 152.6 Carrying capacities.

(a) The Commissioner of Indian Affairs on June 26, 1943, promulgated the authorized carrying capacity for each land management district of the Navajo Reservation.

(b) Recommended adjustments in carrying capacities shall be referred by the Superintendent to District Grazing Committee, Central Grazing Committee, and the Navajo Tribal Council for review and recommendations prior to presentation to the Area Director and the Commissioner of Indian Affairs for approval.

(c) Upon the request of the District Grazing Committee, Central Grazing Committee and Navajo Tribal Council to the Superintendent; recommendations for future adjustments to the established carrying capacities shall be made by Range Technicians based on the best information available through annual utilization studies and range condition studies analyzed along with numbers of livestock and precipitation data. The recommendations of the Range Technicians shall be submitted to the Superintendent, the Area Director and the Commissioner of Indian Affairs.

(d) Carrying capacities shall be stated in terms of sheep units yearlong, in the ratio of horses, mules, and burros 1 to 5; cattle 1 to 4; goats 1 to 1. The latter figure in each case denotes sheep units. Sheep, goats, cattle, horses, mules, and burros one year of age or older shall be counted against the carrying capacity.

§ 152.7 Records.

The District Grazing Committee, the Superintendent, and his authorized representatives shall keep accurate records of all grazing permits and ownership of all livestock. Master files shall be maintained by the Superintendent or his authorized representatives.

(a) The District Grazing Committee shall be responsibile for and assist in organizing the sheep and goat dipping and horse and cattle branding program and obtaining the annual livestock count.

(b) In order to obtain true records of ownership the permittee shall personally appear at the dipping vat or tallying point designated by the Grazing Committee with his or her sheep and goats and at branding and tallying points for cattle and horses. Should the permittee be unable to appear personally he or she shall designate a representative to act for and in his or her behalf. The sheep and goats will be dipped and the cattle and horses will be branded and recorded in the name of the permittee.

(c) The Superintendent shall prepare and keep current a register containing the names of all permittees using the range, the number of each class of stock by age classes grazed annually and the periods during which grazing shall be permitted in each part thereof. An annual stock census will be taken to insure that the carrying

capacity is not exceeded. All classes of livestock twelve months of age or over will be counted against range use and permitted number, except that yearling colts will not be counted against permitted numbers on all permits with less than six horses. (Cross Reference § 152.9.)

§ 152.8 Grazing rights.

(a) The Superintendent shall determine grazing rights of bona fide livestock owners based on recommendations of District Grazing Committees. Grazing rights shall be recognized for those permittees having ownership records as established in accordance with § 152.7 or who have acquired grazing rights by marriage, inheritance, purchase or division of permits. Whenever the permitted number of sheep units within a district is less than the carrying capacity, new permits to the carrying capacity limit may be granted as provided in § 152.9.

(b) All enrolled members of the Navajo Tribe over 18 years of age are eligible to acquire and hold grazing permits. Minors under 18 years of age can get possession of grazing permits only through inheritance or gift, and in each case Trustees must be appointed by the Tribal Courts to manage the permits and livestock of such minors until they become 18 years of age and can hold grazing permits in their own right.

(c) No person can hold a grazing permit in more than one district on the Navajo Reservation.

(d) Determination of rights to grazing permits involved in cases of divorce, separation, threatened family disruption, and permits of deceased permittees shall be the responsibility of the Navajo Court of Indian Offenses under existing laws, rules, and regulations.

§ 152.9 Grazing permits.

(a) All livestock grazed on the Navajo Reservation must be covered by an authorized grazing permit issued by the Superintendent based upon the recommendations of the District Grazing Committee. All such grazing permits will be automatically renewed annually until terminated. District Grazing Committees shall act on all grazing permit changes resulting from negotiability within their respective Districts. The number of livestock that may be grazed under each permit shall be the number originally permitted plus or minus any changes as indicated by Transfer Agreements and Court Judgment Orders.

(b) Any permittee who has five or more horses on his current permit will be required to apply any acquired sheep units in classes of stock other than horses. If the purchaser wishes more than his present number of horses, he must have his needs evaluated by the District Grazing Committee. Yearling colts will be counted against permitted number on all permits with six or more horses. Yearling colts will not be counted against permitted number on all permits with less than six horses. In hardship cases the District Grazing Committee may reissue horses removed from grazing permits through negotiability to permit holders who are without sufficient horses on their present permits to meet minimum needs.

(c) No permittee shall be authorized to graze more than ten head of horses or to accumulate a total of over 350 sheep units.

(d) Upon recommendation of the District Grazing Committee and with the approval of the Superintendent, grazing permits may be transferred from one permittee to another in accordance with instructions provided by the Advisory Committee of the Navajo Tribal Council, or may be inherited; provided that the permitted holdings of any individual permittee shall not exceed 350 sheep units or the equivalent thereof. Should inheritance or other acquisition of permits increase the holdings of any permittee to more than 350 sheep units, said permittee shall dispose of all livestock in excess of 350 sheep units not later than November 15 following date of inheritance or other acquisition, and that portion of his or her permit in excess of 350 sheep units within one year from date of inheritance.

(e) By request of a permittee to sublet all or a part of his or her regular grazing permit to a member of his family or to any person who would receive such permit by inheritance, such

subletting of permits may be authorized by the District Grazing Committee and the Superintendent or his authorized representative.

§ 152.10 Special grazing permits.

The problem of special grazing permits shall be settled by the Bureau of Indian Affairs working in cooperation with the Tribal Council, or any Committee designated by it, with a view to terminating these permits at a suitable date and with the least hardship to the Indians concerned.

§ 152.11 Tenure of grazing permits.

(a) All active regular grazing permits shall be for one year and shall be automatically renewed annually until terminated. Any Navajo eligible to hold a grazing permit as defined in § 152.8 may become a livestock operator by obtaining an active grazing permit through negotiability or inheritance or both.

(b) In many Districts, and portions of all districts, unused grazing permits or portions of grazing permits are beneficial in aiding range recovery. Each District Grazing Committee will handle each matter of unused grazing permit or portions of grazing permits on individual merits. Where ample forage is available operators will be encouraged to fill their permits with livestock or dispose of their unused permits through negotiability. In those areas where forage is in need of rehabilitation permittees will not be encouraged to stock to their permitted numbers until the range has sufficiently recovered to justify the grazing of additional livestock.

§ 152.12 Grazing fees.

Grazing fees shall not be charged at this time.[1]

[1]Grazing Committees were organized in May 1953. These committees have not had ample time to fully acquaint themselves or the stockmen in their respective districts with all of the various items of range administration and range management. Also the drought of several years has not broken. The Navajo Tribe therefore requests that the matter of establishing regulations regarding the adoption of grazing fees be deferred until such a time as a full understanding of the advantages of fees can be had by the majority of the stockmen in all Districts. The assessment of grazing fees will not aid materially in obtaining proper range use. At this time it is more important that other sections of these grazing regulations be adopted and enforced. Resolution of Navajo Tribal Council No. CJ-22-54 of June 9, 1954.

§ 152.13 Trespass.

The owner of any livestock grazing in trespass in Navajo Tribal ranges shall be subject to action by the Navajo Court of Indian Offenses as provided in Part 11 of this chapter, however, upon recommendations of the District Grazing Committee, first offenses may be referred to the Central Grazing Committee and the Superintendent or his authorized representative for proper settlement out of court. The following acts are considered as trespass:

(a) Any person who sells an entire permit must dispose of all his livestock or be in trespass. Any person selling a portion of his permit must not run more stock than covered by his remaining permit, or be subject to immediate trespass.

(b) All persons running livestock in excess of their permitted number must by April 25, 1959, either obtain permits to cover their total livestock numbers or reduce to their permitted number, or be in trespass. Additional time may be granted in unusual individual cases as determined and approved by the District Grazing Committee, General Grazing Committee, and the Superintendent or his authorized representative.

(c) Failure to comply with the provisions in § 152.9, shall be considered as trespass.

(d) Any person who willfully allows his livestock to drift from one district to another shall be subject to trespass action. The grazing of livestock in customary use areas extending over District Boundary lines, when such customary use areas are defined and agreed upon by the District Grazing Committees involved, shall not be considered as willful trespass.

(e) The owner of any livestock who violates the customary or established use units of other permittees shall be subject to trespass action.

[22 FR 10578, Dec. 24, 1957, as amended at 24 FR 1178, Feb. 17, 1959]

§ 152.14 Movement of livestock.

Annually, prior to the normal lamb buying season, the Central Grazing Committee after consultation with District Grazing Committees shall issue regulations covering the buying period and the procedures and methods to be used in moving livestock to market. All movements of livestock other than trucking from buying areas to loading or shipping points must be authorized by Trailing Permits issued by the District Grazing Committees on the approved forms. Failure to comply with this section and with annual lamb buying regulations will be considered as trespass.

§ 152.15 Control of livestock disease and introduction of livestock.

(a) The District Grazing Committees with the approval of the Superintendent shall require livestock to be dipped, vaccinated, inspected and be restricted in movement when necessary to prevent the introduction and spread of contagious or infectious disease in the economic interest of the Navajo stock owners. Upon the recommendation of the District Grazing Committee livestock shall be dipped annually when such dipping is necessary to prevent the spread of contagious diseases. These annual dippings shall be completed on or before September 1st each year. Livestock, however, may be dipped at other times when necessary. The Superintendent or his authorized representative and the District Grazing Committee may also require the rounding up of cattle, horses, mules, etc., in each District for the purpose of inspection for disease, vaccinating, branding and other related operations.

(b) No livestock shall be brought onto the Reservation without a permit issued by the Superintendent or his authorized representative following inspection, in order to safeguard Indian livestock from infections and contagious disease and to insure the introduction of good quality sires and breeding stock.

(c) Any unusual disease conditions beyond the control measures provided herein shall be immediately reported by the District Grazing Committee to the Chairman of the Navajo Tribal Council and the Superintendent who shall attempt to obtain specialists and provide emergency funds to control and suppress the disease.

§ 152.16 Fences.

Favorable recommendation from the District Grazing Committee and a written authorization from the Superintendent or his authorized representative must be secured before any fences may be constructed in non-agricultural areas. The District Grazing Committee shall recommend to the Superintendent the removal of unauthorized existing fences, or fences enclosing Demonstration Areas no longer used as such, if it is determined that such fences interfere with proper range management or an equitable distribution of range privileges. All enclosures fenced for the purpose of protecting agricultural land shall be kept to a size commensurate with the needs for protection of agricultural land and must be enclosed by legal four strand barbed wire fence or the equivalent.

§ 152.17 Construction near permanent livestock water developments.

(a) The District Grazing Committee shall regulate the construction of all dwellings, corrals and other structures within one-half mile of Government or Navajo Tribal developed permanent livestock waters such as springs, wells, and charcos or deep reservoirs.

(b) A written authorization from the District Grazing Committee must be secured before any dwellings, corrals, or other structures may be constructed within one-half mile of Government or Navajo Tribal developed springs, wells and charcos or deep reservoirs.

(c) No sewage disposal system shall be authorized to be built which will drain into springs or stream channels in such a manner that it would cause contamination of waters being used for livestock or human consumption.

PART 153—GRAZING REGULATIONS FOR FORMER NAVAJO-HOPI JOINT USE AREA LANDS

Sec.

153.1 Definitions.
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153.19 Impoundment and disposal of unauthorized livestock.
153.20 Grazing privileges of persons awaiting relocation.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, and 640d-18.

SOURCE: 42 FR 21281, Apr. 26, 1977, unless otherwise noted.

§ 153.1 Definitions.

As used in this Part 153, terms shall have the meanings set forth in this section.

(a) "Project Officer" means the Special Project Officer of the Bureau of Indian Affairs, Administrative Office, Flagstaff, Arizona 86001, to whom has been delegated the authority of the Commissioner to act in matters respecting the former Joint Use Area.

(b) "Former Joint Use Area" means the area established by the United States District Court for the District of Arizona in the case entitled *Healing* v. *Jones*, 210 F. Supp. 125 (1962), which is inside the Executive Order Area (Executive Order of December 16, 1882) but outside Land Management District 6 and which was partitioned by court order dated February 10, 1977.

(c) "Range unit" means a tract of range land designated as a management unit for administration of grazing.

(d) "Permit" means a revocable privilege granted in writing limited to entering on and utilizing forage by domestic livestock on a specified tract of land. The term as used herein shall include written authorizations issued to enable the crossing or trailing of domestic livestock across specified tracts or range units.

(e) "Animal unit" means one adult cow with unweaned calf by her side or the equivalent thereof based on comparative forage consumption. Conversion factors to be accepted are: ewe, doe, buck, ram, 0.25; horse, mule, donkey, burro, 1.25 animal units.

(f) "Tribe" means the Navajo or Hopi Tribes including all bands, chapters, villages and clans.

(g) "Allocate" means to apportion grazing privileges including the determination of who may graze livestock, the number and kind of livestock, and the place such livestock will be grazed.

(h) "Person awaiting relocation" means a resident of the former Joint Use Area who meets each of the following criteria: (1) is listed on the Bureau of Indian Affairs enumeration; (2) has a livestock inventory listed with the project officer; (3) is eligible for relocation under the Settlement Act; and (4) was grazing livestock on the date of the entry of the Judgment of Partition, April 18, 1979.

(i) "Carrying capacity" means the maximum stocking rate possible without inducing damage to vegetation or related resources.

(j) "BIA enumeration" means the list of persons living on and improvements located within the former joint use area obtained by door-to-door interviews by the project officer's staff.

(k) "Livestock inventory" means the list maintained by the project officer of livestock owned by persons having customary grazing use in the former joint use area.

(l) "Settlement Act" means the Act of December 22, 1974, 88 Stat. 1712, 25 U.S.C. §§ 640d-6400d-24, in which the U.S. District Court for the District of Arizona was authorized to partition the joint use area lands equally between the Navajo and Hopi Tribes; and in which the Secretary of the In-

terior is directed to immediately commence the reduction of livestock grazing on the joint use area and to complete reduction to carrying capacity, to restore the range to the maximum extent feasible, and to survey, monument, and fence the partition boundary.

[42 FR 21281, Apr. 26, 1977, as amended at 44 FR 47331, Aug. 13, 1979]

§ 153.2 Authority.

It is within the general authority of the Secretary to protect Indian trust lands against waste and to prescribe rules and regulations under which these lands may be leased or permitted for grazing. Also, under the Navajo-Hopi Settlement Act, 25 U.S.C. 640d–640d-24, the Secretary is to (a) reduce livestock grazing within the former Joint Use Area to carrying capacity, (b) restore the range to the maximum grazing extent feasible, and (c) survey, monument and fence the partition boundary.

§ 153.3 Purpose.

These regulations are issued to carry out the Secretary's responsibilities mandated by the Settlement Act. The regulations of Part 153 apply only to the former Joint Use Area of the 1882 Executive Order Area. Parts 151 and 152 do not apply to the former Joint Use Area.

§ 153.4 Establishment of range units.

The Project Officer will use Soil and Range Inventory data to establish range units on the former Joint Use Area to allow for a program of surface land use so as to restore the land to its full grazing potential to the maximum extent feasible.

§ 153.5 Grazing capacity.

(a) The Project Officer shall prescribe the maximum number and kind of livestock which may be grazed without inducing damage to vegetation or related resources on each range unit and the season or seasons of use to achieve the objectives of the land recovery program required by the Settlement Act.

(b) The stocking rate upon which the grazing permits are issued shall be reviewed on a continuing basis and adjusted as conditions warrant.

§ 153.6 Grazing on range units authorized by permit.

Grazing use on range units is authorized only by a grazing permit. The project officer shall assign grazing privileges to each tribe for their respective reservation lands within the former joint use area and/or shall allocate grazing in accordance with § 153.20. Grazing use by tribal enterprises will be permitted and permits may be issued in the name of the tribe. The project officer will issue permits to persons or enterprises based on the determination by the respective tribes or pursuant to § 153.20.

[44 FR 47331, Aug. 13, 1979]

§ 153.7 Kind of livestock.

Unless preempted by the project officer's action under § 153.20, each tribe may determine, subject to the carrying capacity, the kind of livestock that may be grazed on the range units within their reservation lands.

[44 FR 47331, Aug. 13, 1979]

§ 153.8 Grazing fees.

(a) The respective tribal grazing bodies may determine whether grazing fees will be charged and the rate to be charged for the use, subject to the provisions of § 153.20.

(b) Annual grazing fees, if any, shall be paid in advance and payment shall be made to the Project Officer for immediate disbursement to the appropriate tribal treasurer.

[42 FR 21281, Apr. 26, 1977, as amended at 44 FR 47331, Aug. 13, 1979]

§ 153.9 Duration of grazing permits.

Each tribe may determine the maximum duration of grazing permits not to exceed one year per permit period and subject to § 153.10(b) and § 153.20.

[44 FR 47331, Aug. 13, 1979]

§ 153.10 Assignment, modification and cancellation of permits.

(a) Grazing permits shall not be assigned, subpermitted or transferred without the consent of the tribe involved and the Project Officer.

(b) The Project Officer may revoke or withdraw all or any part of the grazing permit by cancellation or modification on 30 days written notice of violation of permit or special conditions affecting the land or the safety of the livestock thereon, as may result from flood, disaster, drought, contagious diseases, etc. Except in the case of extreme necessity, cancellation or modification shall be effected on the next annual anniversary date of the grazing permit following the date of notice. Revocation or withdrawal of all or any part of a grazing permit by cancellation or modification as provided herein shall be an appealable decision under 25 CFR Part 2. For the purpose of taking an appeal, decisions of the Project Officer shall be considered under 25 CFR 2 in the same manner as taking an appeal of a decision of an Area Director.

§ 153.11 Conservation and land use provisions.

Grazing operations shall be conducted in accordance with recognized principles of good range management. Conservation management plans necessary to accomplish this will be made a part of the grazing permit.

§ 153.12 Range improvements; ownership; new construction.

Improvements placed on the permitted land shall be considered affixed to the land unless specifically excepted therefrom under the permit terms. Written permission to construct or remove improvements must be obtained from the respective tribe within whose reservation the lands are located and the Project Officer, who will specify the maximum time allowed for removal of improvements so excepted.

§ 153.13 Payment of tribal fees.

Subject to the provisions of § 153.20, fees and taxes exclusive of annual grazing rental provided for in § 153.8 which may be assessed by the respective tribes in connection with grazing permits shall be billed for by the respective tribe and paid annually in advance to the designated tribal official. Failure to make payments will subject the grazing permit to cancellation and may disqualify the permittee from receiving future permits so long as he is delinquent.

[44 FR 47332, Aug. 13, 1979]

§ 153.14 Special permit requirements and provisions.

All grazing permits shall contain the following provisions:

(a) Because the lands covered by the permit are in trust status, all of permittee's obligations on the permit and the obligations of his sureties are to the United States as well as to the beneficial owners of the land. Annual rent and other obligations under the terms of a valid grazing permit shall constitute a first lien on livestock permitted.

(b) The permittee agrees he will not use, cause, or allow to be used any part of the permitted area for any unlawful conduct or purpose.

(c) The permit authorized the grazing of livestock only and the permittee shall not utilize the permitted area for hay cutting, hunting, post or timber cutting or any other use without authorization from the Project Officer.

§ 153.15 Violations.

In addition to the penalties provided in this part, violation of the provisions of this part are subject to penalties of the Code of Offenses applicable to the former Joint Use Area.

§ 153.16 Fences.

Fencing will be erected by the Federal Government around the perimeter of the 1882 Executive Order Area, Land Management District 6, and on the boundary of the former Joint Use Area partitioned to each tribe by Order of District Court on February 10, 1977. Fencing of other areas in the former Joint Use Area will be required for a range recovery program in accordance with the range units established under § 153.4. Such fencing shall be erected at Government expense and such ownership shall be clearly identified by appropriate posting on the fencing. Intentional destruction of Federal property will be treated as a violation of the Federal criminal statute, 18 U.S.C. 1164.

§ 153.17 Livestock trespass.

In addition to any criminal liability, the owner of any grazing livestock in trespass on the former Joint Use Area is liable to a civil penalty of $1 per head for each animal thereof for each day of trespass, together with the reasonable value of the forage consumed and damages to property injured or destroyed. The Project Officer shall take action to collect all such penalties and damages and seek injunctive relief when appropriate. All payments for such penalties and damages shall be credited to the tribe on whose lands the livestock trespassed. The following acts are prohibited:

(a) The grazing upon or driving across any of the former Joint Use Area of any livestock without an approved grazing or crossing permit.

(b) Allowing livestock to drift and graze on lands without an approved permit.

(c) The grazing of livestock upon lands within an area closed to grazing of that class of livestock.

(d) The grazing of livestock by permittee upon any land withdrawn from use for grazing purposes to protect it from damage by reason of the improper handling of the livestock, after the receipt of notice from the Project Officer of such withdrawal, or refusal to remove livestock upon instructions from the Project Officer when an injury is being done to the Indian lands by reason of improper handling of livestock.

§ 153.18 Control of livestock diseases and parasites.

Whenever livestock within the former Joint Use Area become infected with contagious or infectious diseases or parasites or have been exposed thereto, such livestock must be treated and the movement thereof restricted in accordance with applicable laws.

§ 153.19 Impoundment and disposal of unauthorized livestock.

Unauthorized livestock within any range unit of the former Joint Use Area which are not removed therefrom within the periods prescribed by the regulation may be impounded and disposed of by the Project Officer as provided herein.

(a) When the Project Officer determines that unauthorized livestock use is occurring and has definite knowledge of the kind of unauthorized livestock, and knows the name and address of the owners, such livestock may be impounded anytime 5 days after written notice of intent to impound unauthorized livestock is mailed by certified or registered mail or personally delivered to such owners.

(b) When the Project Officer determines that unauthorized livestock use is occurring but does not have complete knowledge of the number and class of livestock or if the name and address of the owner thereof are unknown such livestock may be impounded anytime 15 days after the date of notice of intent to impound unauthorized livestock is first published in the local newspaper, posted at the nearest chapter house and in one or more local trading posts. The notice will identify the area or areas in which it will be effective.

(c) Unauthorized livestock on the former Joint Use Area which are owned by persons given notice under paragraph (a) of this section, and any unauthorized livestock in areas for which a notice has been posted and published under paragraph (b) of this section, may be impounded without further notice anytime within the twelve-month period immediately following the effective date of the notice or notices given under paragraphs (a) and (b) of this section.

(d) Following the impoundment of unauthorized livestock, a notice of sale of impounded livestock will be published in the local newspaper, posted at the chapter house and in one or more local trading posts. The notice will describe the livestock and specify the date, time and place of sale. The date set shall be at least 5 days after the publication and posting of such notice.

(e) The owner may redeem the livestock anytime before the time set for the sale by submitting proof of ownership and paying for all expenses incurred in gathering, impounding and feeding or pasturing the livestock.

(f) If the livestock are not redeemed before the time fixed for their sale, they shall be sold at public sale to the highest bidder, provided his bid is at or above the minimum amount set by the Project Officer. If a bid at or above the minimum is not received, the livestock may be sold at private sale at or above the minimum amount, reoffered at public sale, condemned and destroyed, or otherwise disposed of. When livestock are sold pursuant to this regulation, the Project Officer shall furnish the buyer a bill of sale or other written instrument evidencing the sale.

(g) The proceeds of any sale of livestock as provided herein shall be applied as follows: First, to the payment of all expenses incurred by the United States in gathering, impounding, and feeding or pasturing the livestock. Second, in payment of any penalties or damages assessed pursuant to § 153.17 of this part which penalties or damages shall be credited to the tribe on whose lands the livestock trespassed as provided in said section. Third, any remaining amount shall be paid over to the owner of said livestock upon his submitting proof of ownership. If any proceeds remaining after payment of the first and second items noted above are not claimed within one year from the date of the sale, such remaining proceeds will be credited to the tribe owning the land.

§ 153.20 Grazing privileges of persons awaiting relocation.

Any person awaiting relocation, as defined in § 153.1(h), shall be eligible for a grazing permit for lands within the former joint use area under the following terms and conditions.

(a) The project officer shall first verify that an applicant meets the criteria of the definition, § 153.1(h).

(b) Permits will be issued by the Project Officer directly to persons awaiting relocation. The permit will not authorize the grazing of more livestock than the person was grazing at the time of the entry of the Judgment of Partition; nor will more than a subsistence number of livestock be permitted to a person. The determination of the person to whom permits will be issued and the subsistence number of livestock to be permitted to a person will be based on information provided by the permit applicant and an assessment of the following factors: (1) The number of dependents in the household and their dietary and household needs; and (2) the age, education and income prospects of the applicant.

(c) The permit shall be for a specific number and kind of animal(s) which shall not exceed the number of animal units of the Flagstaff Administrative Office's livestock inventory as of February 10, 1977. No such permits will be issued that exceed one-half the carrying capacity of a range unit.

(d) Grazing fees will be assessed and paid in accordance with the Settlement Act provision for rental of the other tribe's lands by persons who are not members, 25 U.S.C. § 640d-15. The project officer will determine the fair rental value as grazing fees and the respective tribes will be responsible for payment of the fees for their members' use. Other fees and/or taxes may be separately assessed by the tribe on whose lands the person awaiting relocation is grazing permitted livestock, but such fees and/or taxes shall not be assessed at a rate greater than that charged to members of the tribe on whose reservation lands the person grazes the livestock.

(e) Subject to the provision of § 153.10(b), permits shall expire when the person awaiting relocation is relocated pursuant to the Settlement Act or on the date a final order is entered (and any appeals concluded) requiring the person to relocate, whichever is earlier. No permit will be issued for a term greater than one year. Permits may be reissued upon application and redetermination of eligibility. All permits will expire at the end of the period provided by the Settlement Act for the completion of relocation, 25 U.S.C. § 640d-13(e). If and when a Navajo permit holder discontinues grazing animals, whether by reason of his relocating or for any other voluntary reason, his grazing permit shall be canceled and no permit shall be issued in lieu thereof; and the number of animals being grazed by the Navajo permit holders shall be reduced by the number of animals covered by the canceled permit.

[44 FR 47332, Aug. 13, 1979]

SUBCHAPTER O—RIGHTS-OF-WAY—ROADS

PART 161—RIGHTS-OF-WAY OVER INDIAN LANDS

Sec.

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AUTHORITY: 5 U.S.C. 301, 62 Stat. 17 (25 U.S.C. 323—328), and other acts cited in the text.

SOURCE: 33 FR 19803, Dec. 27, 1968, unless otherwise noted.

§ 161.1 Definitions.

As used in this Part 161:

(a) "Secretary" means the Secretary of the Interior or his authorized representative acting under delegated authority. Before proceeding under these regulations anyone desiring a right-of-way should inquire at the Indian Agency, Area Field Office, or other office of the Bureau of Indian Affairs having immediate supervision over the lands involved to determine the identity of the authorized representative of the Secretary for the purposes of this Part 161.

(b) "Individually owned land" means land or any interest therein held in trust by the United States for the benefit of individual Indians and land or any interest therein held by individual Indians subject to Federal restrictions against alienation or encumbrance.

(c) "Tribe" means a tribe, band, nation, community, group or pueblo of Indians.

(d) "Tribal land" means land or any interest therein, title to which is held by the United States in trust for a tribe, or title to which is held by any tribe subject to Federal restrictions against alienation or encumbrance, and includes such land reserved for Indian Bureau administrative purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).

(e) "Government owned land" means land owned by the United States and under the jurisdiction of the Secretary which was acquired or set aside for the use and benefit of Indians and not included in the definitions set out in paragraphs (b) and (d) of this section.

§ 161.2 Purpose and scope of regulations.

(a) Except as otherwise provided in § 1.2 of this chapter, the regulations in this Part 161 prescribe the procedures, terms and conditions under which rights-of-way over and across tribal land, individually owned land and Government owned land may be granted.

(b) Appeals from administrative action taken under the regulations in this Part 161 shall be made in accordance with Part 2 of this chapter.

(c) The regulations contained in this Part 161 do not cover the granting of rights-of-way upon tribal lands within a reservation for the purpose of constructing, operating, or maintaining dams, water conduits, reservoirs, powerhouses, transmission lines or other works which shall constitute a part of any project for which a license

is required by the Federal Power Act. The Federal Power Act provides that any license which shall be issued to use tribal lands within a reservation shall be subject to and contain such conditions as the Secretary of the Interior shall deem necessary for the adequate protection and utilization of such lands. (16 U.S.C. 797(e)). In the case of tribal lands belonging to a tribe organized under the Act of June 18, 1934 (48 Stat. 984), the Federal Power Act requires that annual charges for the use of such tribal lands under any license issued by the Federal Power Commission shall be subject to the approval of the tribe (16 U.S.C. 803(e)).

§ 161.3 Consent of landowners to grants of rights-of-way.

(a) No right-of-way shall be granted over and across any tribal land, nor shall any permission to survey be issued with respect to any such lands, without the prior written consent of the tribe.

(b) Except as provided in paragraph (c) of this section, no right-of-way shall be granted over and across any individually owned lands, nor shall any permission to survey be issued with respect to any such lands, without the prior written consent of the owner or owners of such lands and the approval of the Secretary.

(c) The Secretary may issue permission to survey with respect to, and he may grant rights-of-way over and across individually owned lands without the consent of the individual Indian owners when (1) the individual owner of the land or of an interest therein is a minor or a person non compos mentis, and the Secretary finds that such grant will cause no substantial injury to the land or the owner, which cannot be adequately compensated for by monetary damages; (2) the land is owned by more than one person, and the owners or owner of a majority of the interests therein consent to the grant; (3) the whereabouts of the owner of the land or an interest therein are unknown, and the owners or owner of any interests therein whose whereabouts are known, or a majority thereof, consent to the grant; (4) the heirs or devisees of a deceased owner of the land or an interest therein have not been determined, and the Secretary finds that the grant will cause no substantial injury to the land or any owner thereof; (5) the owners of interests in the land are so numerous that the Secretary finds it would be impracticable to obtain their consent, and also finds that the grant will cause no substantial injury to the land or any owner thereof.

[36 FR 14183, July 31, 1971]

§ 161.4 Permission to survey.

Anyone desiring to obtain permission to survey for a right-of-way across individually owned, tribal or Government owned land must file a written application therefor with the Secretary. The application shall adequately describe the proposed project, including the purpose and general location, and it shall be accompanied by the written consents required by § 161.3, by satisfactory evidence of the good faith and financial responsibility of the applicant, and by a check or money order of sufficient amount to cover twice the estimated damages which may be sustained as a result of the survey. With the approval of the Secretary, a surety bond may be substituted in lieu of a check or money order accompanying an application, provided the company issuing the surety bond is licensed to do business in the State where the land to be surveyed is located. The application shall contain an agreement to indemnify the United States, the owners of the land, and occupants of the land, against liability for loss of life, personal injury and property damage occurring because of survey activities and caused by the applicant, his employees, contractors and their employees, or subcontractors and their employees. When the applicant is an agency or instrumentality of the Federal or a State Government and is prohibited by law from depositing estimated damages in advance or agreeing to indemnification, the requirement for such a deposit and indemnification may be waived providing the applicant agrees in writing to pay damages promptly when they are sustained. An application filed by a corporation must be ac-

companied by a copy of its charter or articles of incorporation duly certified by the proper State official of the State where the corporation was organized, and a certified copy of the resolution or bylaws of the corporation authorizing the filing of the application. When the land covered by the application is located in a State other than that in which the application was incorporated, it must also submit a certificate of the proper State official that the applicant is authorized to do business in the State where the land is located. An application filed by an unincorporated partnership or association must be accompanied by a certified copy of the articles of partnership or association, or if there be none, this fact must be stated over the signature of each member of the partnership or association. If the applicant has previously filed with the Secretary an application accompanied by the evidence required in this section, a reference to the date and place of such filing, accompanied by proof of current financial responsibility and good faith, will be sufficient. Upon receipt of an application made in compliance with the regulations of this Part 161, the Secretary may grant the applicant written permission to survey.

§ 161.5 Application for right-of-way.

Written application, in duplicate, for a right-of-way shall be filed with the Secretary. The application shall cite the statute or statutes under which it is filed and the width and length of the desired right-of-way, and shall be accompanied by satisfactory evidence of the good faith and financial responsibility of the applicant. An application filed by a corporation must be accompanied by a copy of its charter or articles of incorporation duly certified by the proper State official of the State where the corporation was organized, and a certified copy of the resolution or bylaws of the corporation authorizing the filing of the application. When the land covered by the application is located in a State other than that in which the applicant was incorporated, it must also submit a certificate of the proper State official that the applicant is authorized to do business in the State where the land is located. An application filed by an unincorporated partnership or association must be accompanied be a certified copy of the articles of partnership or association, or if there be none, this fact must be stated over the signature of each member of the partnership or association. If the applicant has previously filed with the Secretary an application accompanied by the evidence required by this section, a reference to the date and place of such filing will be sufficient. Except as otherwise provided in this section, the application shall be accompanied by a duly executed stipulation, in duplicate, expressly agreeing to the following:

(a) To construct and maintain the right-of-way in a workmanlike manner.

(b) To pay promptly all damages and compensation, in addition to the deposit made pursuant to § 161.4, determined by the Secretary to be due the landowners and authorized users and occupants of the land on account of the survey, granting, construction and maintenance of the right-of-way.

(c) To indemnify the landowners and authorized users and occupants against any liability for loss of life, personal injury and property damage arising from the construction, maintenance, occupancy or use of the lands by the applicant, his employees, contractors and their employees, or subcontractors and their employees.

(d) To restore the lands as nearly as may be possible to their original condition upon the completion of construction to the extent compatible with the purpose for which the right-of-way was granted.

(e) To clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project.

(f) To take soil and resource conservation and protection measures, including weed control, on the land covered by the right-of-way.

(g) To do everything reasonably within its power to prevent and suppress fires on or near the lands to be occupied under the right-of-way.

(h) To build and repair such roads, fences, and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.

(i) That upon revocation or termination of the right-of-way, the applicant shall, so far as is reasonably possible, restore the land to its original condition.

(j) To at all times keep the Secretary informed of its address, and in case of corporations, of the address of its principal place of business and of the names and addresses of its principal officers.

(k) That the applicant will not interfere with the use of the lands by or under the authority of the landowners for any purpose not inconsistent with the primary purpose for which the right-of-way is granted.

When the applicant is the U.S. Government or a State Government or an instrumentality thereof and is prohibited by law from executing any of the above stipulations, the Secretary may waive the requirement that the applicant agree to any stipulations so prohibited.

§ 161.6 Maps.

(a) Each application for a right-of-way shall be accompanied by maps of definite location consisting of an original on tracing linen or other permanent and reproducible material and two reproductions thereof. The field notes shall accompany the application, as provided in § 161.7. The width of the right-of-way shall be clearly shown on the maps.

(b) A separate map shall be filed for each section of 20 miles of right-of-way, but the map of the last section may include any excess of 10 miles or less.

(c) The scale of maps showing the line of route normally should be 2,000 feet to an inch. The maps may, however, be drawn to a larger scale when necessary and when an increase in scale cannot be avoided through the use of separate field notes, but the scale must not be increased to such extent as to make the maps too cumbersome for convenient handling and filing.

(d) The maps shall show the allotment number of each tract of allotted land, and shall clearly designate each tract of tribal land affected, together with the sections, townships, and ranges in which the lands crossed by the right-of-way are situated.

§ 161.7 Field notes.

Field notes of the survey shall appear along the line indicating the right-of-way on the maps, unless the maps would be too crowded thereby to be easily legible in which event the field notes may be filed separately on tracing linen in such form that they may be folded readily for filing. Where field notes are placed on separate tracing linen, it will be necessary to place on the maps only a sufficient number of station numbers so as to make it convenient to follow the field notes. The field notes shall be typewritten. Whether endorsed on the maps or filed separately, the field notes shall be sufficiently complete so as to permit the line indicating the right-of-way to be readily retraced on the ground from the notes. They shall show whether the line was run on true or magnetic bearings, and, in the latter case, the variation of the needle and date of determination must be stated. One or more bearings (or angular connections with public survey lines) must be given. The 10-mile sections must be indicated and numbered on all lines of road submitted.

§ 161.8 Public survey.

(a) The termini of the line of route shall be fixed by reference of course and distance to the nearest existing corner of the public survey. The maps, as well as the engineer's affidavit and the certificate, shall show these connections.

(b) When either terminal of the line of route is upon unsurveyed land, it must be connected by traverse with an established corner of the public survey if not more than 6 miles distant from it, and the single bearing and distance from the terminal point to the corner computed and noted on the maps, in the engineer's affidavit, and in the certificate. The notes and all data for the

computation of the traverse must be given.

§ 161.9 Connection with natural objects.

When the distance to an established corner of the public survey is more than 6 miles, this connection will be made with a natural object or a permanent monument which can be readily found and recognized, and which will fix and perpetuate the position of the terminal point. The maps must show the position of such mark, and course and distance to the terminus. There must be given an accurate description of the mark and full data concerning the traverse, and the engineer's affidavit and the certificate on the maps must state the connections.

§ 161.10 Township and section lines.

Whenever the line of survey crosses a township or section line of the public survey, the distance to the nearest existing corner shall be noted. The maps shall show these distances and the station numbers at the points of intersections. The field notes shall show these distances and the station numbers.

§ 161.11 Affidavit and certificate.

(a) There shall be subscribed on the maps of definite location an affidavit executed by the engineer who made the survey and a certificate executed by the applicant, both certifying to the accuracy of the survey and maps and both designating by termini and length in miles and decimals, the line of route for which the right-of-way application is made.

(b) Maps covering roads built by the Bureau of Indian Affairs which are to be transferred to a county or State government shall contain an affidavit as to the accuracy of the survey, executed by the Bureau highway engineer in charge of road construction, and a certificate by the State or county engineer or other authorized State or county officer accepting the right-of-way and stating that he is satisfied as to the accuracy of the survey and maps.

§ 161.12 Consideration for right-of-way grants.

Except when waived in writing by the landowners or their representatives as defined in § 161.3 and approved by the Secretary, the consideration for any right-of-way granted or renewed under this Part 161 shall be not less than the appraised fair market value of the rights granted, plus severance damages, if any, to the remaining estate.

§ 161.13 Other damages.

In addition to the consideration for a grant of right-of-way provided for by the provisions of § 161.12, the applicant for a right-of-way will be required to pay all damages incident to the survey of the right-of-way or incident to the construction or maintenance of the facility for which the right-of-way is granted.

§ 161.14 Deposit and disbursement of consideration and damages.

At the time of filing an application for right-of-way, the applicant must deposit with the Secretary the total estimated consideration and damages, which shall include consideration for the right-of-way, severance damages, damages caused during the survey, and estimated damages to result from construction less any deposit previously made under § 161.4. In no case shall the amount deposited as consideration for the right-of-way over any parcel be less than the amount specified in the consent covering that parcel. If in reviewing the application, the Secretary determines that the amounts deposited are inadequate to compensate the owners, the applicant shall increase the deposit to an amount determined by the Secretary to be adequate. The amounts so deposited shall be held in a "special deposit" account for distribution to or for the account of the landowners and authorized users and occupants of the land. Amounts deposited to cover damages resulting from survey and construction may be disbursed after the damages have been sustained. Amounts deposited to cover consideration for the right-of-way and severance damages shall be disbursed upon the granting of the right-of-way. Any part of the deposit which is not required for disbursement as aforesaid shall be refunded to the applicant promptly following receipt of the affi-

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davit of completion of construction filed pursuant to § 161.16.

§ 161.15 Action on application.

Upon satisfactory compliance with the regulations in this Part 161, the Secretary is authorized to grant the right-of-way by issuance of a conveyance instrument in the form approved by the Secretary. Such instrument shall incorporate all conditions or restrictions set out in the consents obtained pursuant to § 161.3. A copy of such instrument shall be promptly delivered to the applicant and thereafter the applicant may proceed with the construction work. Maps of definite location may be attached to and incorporated into the conveyance document by reference. In the discretion of the Secretary, one conveyance document may be issued covering all of the tracts of land traversed by the right-of-way, or separate conveyances may be made covering one or several tracts included in the application. A duplicate original copy of the conveyance instrument, permanent and reproducible maps, a copy of the application and stipulations, together with any other pertinent documents shall be transmitted by the Secretary to the office of record for land documents affecting the land covered by the right-of-way, where they will be recorded and filed.

§ 161.16 Affidavit of completion.

Upon the completion of the construction of any right-of-way, the applicant shall promptly file with the Secretary an affidavit of completion, in duplicate, executed by the engineer and certified by the applicant. The Secretary shall transmit one copy of the affidavit to the office of record mentioned in § 161.15. Failure to file an affidavit in accordance with this section shall subject the right-of-way to cancellation in accordance with § 161.20.

§ 161.17 Change of location.

If any change from the location described in the conveyance instrument is found to be necessary on account of engineering difficulties or otherwise, amended maps and field notes of the new location shall be filed, and a right-of-way for such new route or location shall be subject to consent, approval, the ascertainment of damages, and the payment thereof, in all respects as in the case of the original location. Before a revised conveyance instrument is issued, the applicant shall execute such instruments deemed necessary by the Secretary extinguishing the right-of-way at the original location. Such instruments shall be transmitted by the Secretary to the office of record mentioned in § 161.15 for recording and filing.

§ 161.18 Tenure of approved right-of-way grants.

All rights-of-way granted under the regulations in this Part 161 shall be in the nature of easements for the periods stated in the conveyance instrument. Except as otherwise determined by the Secretary and stated in the conveyance instrument, rights-of-way granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), for railroads, telephone lines, telegraph lines, public roads and highways, access roads to homesite properties, public sanitary and storm sewer lines including sewage disposal and treatment plants, water control and use projects (including but not limited to dams, reservoirs, flowage easements, ditches, and canals), oil, gas, and public utility water pipelines (including pumping stations and appurtenant facilities), electric power projects, generating plants, switchyards, electric transmission and distribution lines (including poles, towers, and appurtenant facilities), and for service roads and trails essential to any of the aforestated use purposes, may be without limitation as to term of years; whereas, rights-of-way for all other purposes shall be for a period of not to exceed 50 years, as determined by the Secretary and stated in the conveyance instrument.

[37 FR 12937, June 30, 1972]

§ 161.19 Renewal of right-of-way grants.

On or before the expiration date of any right-of-way heretofore or hereafter granted for a limited term of years, an application may be submitted for a renewal of the grant. If the renewal involves no change in the location or

status of the original right-of-way grant, the applicant may file with his application a certificate under oath setting out this fact, and the Secretary, with the consent required by § 161.3, may thereupon extend the grant for a like term of years, upon the payment of consideration as set forth in § 161.12. If any change in the size, type, or location of the right-of-way is involved, the application for renewal shall be treated and handled as in the case of an original application for a right-of-way.

§ 161.20 Termination of right-of-way grants.

All rights-of-way granted under the regulations in this part shall be terminable in whole or in part upon 30 days written notice from the Secretary mailed to the grantee at its latest address furnished in accordance with § 161.5(j), for any of the following causes:

(a) Failure to comply with any term or condition of the grant or the applicable regulations;

(b) A nonuse of the right-of-way for a consecutive 2-year period for the purpose for which it was granted;

(c) An abandonment of the right-of-way.

If within the 30-day notice period the grantee fails to correct the basis for termination, the Secretary shall issue an appropriate instrument terminating the right-of-way. Such instrument shall be transmitted by the Secretary to the office of record mentioned in § 161.15 for recording and filing.

§ 161.21 Condemnation actions involving individually owned lands.

The facts relating to any condemnation action to obtain a right-of-way over individually owned lands shall be reported immediately by officials of the Bureau of Indian Affairs having knowledge of such facts to appropriate officials of the Interior Department so that action may be taken to safeguard the interests of the Indians.

§ 161.22 Service lines.

(a) An agreement shall be executed by and between the landowner or a legally authorized occupant or user of individually owned land and the applicant before any work by the applicant may be undertaken to construct a service line across such land. Such a service line shall be limited in the case of power lines to a voltage of 14.5 kv. or less except lines to serve irrigation pumps and commercial and industrial uses which shall be limited to a voltage not to exceed 34.5 kv. A service line shall be for the sole purpose of supplying the individual owner or authorized occupant or user of land, including schools and churches, with telephone, water, electric power, gas, and other utilities for use by such owner, occupant, or user of the land on the premises.

(b) A similar agreement to that required in paragraph (a) of this section shall be executed by the tribe or legally authorized occupant or user of tribal land and the applicant before any work by the applicant may be undertaken for the construction of a service line across tribal land. A service line shall be for the sole purpose of supplying an occupant or user of tribal land with any of the utilities specified in paragraph (a) of this section. No agreement under this paragraph shall be valid unless its execution shall have been duly authorized in advance of construction by the governing body of the Indian tribe whose land is affected, unless the contract under which the occupant or user of the land obtained his rights specifically authorizes such occupant or user to enter into service agreements for utilities without further tribal consent.

(c) In order to encourage the use of telephone, water, electric power, gas and other utilities and to facilitate the extension of these modern conveniences to sparsely settled Indian areas without undue costs the agreement referred to in paragraph (a) of this section shall only be required to include or have appended thereto, a plat or diagram showing with particularity the location, size, and extent of the line. When the plat or diagram is placed on a separate sheet it shall bear the signature of the parties. In case of tribal land, the agreement shall be accompanied by a certified copy of the tribal authorization when required.

(d) An executed copy of the agreement, together with a plat or diagram, and in the case of tribal land, an authenticated copy of the tribal authorization, when required, shall be filed with the Secretary within 30 days after the date of its execution. Failure to meet this requirement may result in the removal of improvements placed on the land at the expense of the party responsible for the placing of such improvements and subject such party to the payment of damages caused by his unauthorized act.

§ 161.23 Railroads.

(a) The Act of March 2, 1899 (30 Stat. 990), as amended by the Acts of February 28, 1902 (32 Stat. 50), June 21, 1906 (34 Stat. 330), and June 25, 1910 (36 Stat. 859; 25 U.S.C. 312—318); the Act of March 3, 1875 (18 Stat. 482; 43 U.S.C. 934); and the Act of March 3, 1909 (35 Stat. 781), as amended by the Act of May 6, 1910 (36 Stat. 349; 25 U.S.C. 320), authorize grants of rights-of-way across tribal, individually owned and Government-owned land, except in the State of Oklahoma, for railroads, station buildings, depots, machine shops, side tracks, turnouts, and water stations; for reservoirs, material or ballast pits needed to the construction, repair, and maintenance of railroads; and for the planting and growing of trees to protect railroad lines. Rights-of-way granted under the above acts shall be subject to the provisions of this section as well as other pertinent sections of this Part 161. Except when otherwise determined by the Secretary, rights-of-way for the above purposes granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), shall also be subject to the provisions of this section.

(b) Rights-of-way for railroads shall not exceed 50 feet in width on each side of the centerline of the road, except where there are heavy cuts and fills, when they shall not exceed 100 feet in width on each side of the road. The right-of-way may include grounds adjacent to the line for station buildings, depots, machine shops, side tracks, turnouts, and water stations, not to exceed 200 feet in width by a length of 3,000 feet, with no more than one station to be located within any one continuous length of 10 miles of road.

(c) Short spurs and branch lines may be shown on the map of the main line, separately described by termini and length. Longer spurs and branch lines shall be shown on separate maps. Grounds desired for station purposes may be indicated on the map of definite location but separate plats must be filed for such grounds. The maps shall show any other line crossed, or with which connection is made. The station number shall be shown on the survey thereof at the point of intersection. All intersecting roads must be represented in ink of a different color from that used for the line for which application is made.

(d) Plats of railroad station grounds shall be drawn on a scale of 400 feet to an inch, and must be filed separately from the line of route. Such plats shall show enough of the line of route to indicate the position of the tract with reference thereto. Each station ground tract must be located with respect to the public survey as provided in § 161.8 and all buildings or other structures shall be platted on a scale sufficiently large to show clearly their dimensions and relative positions.

(e) If any proposed railroad is parallel to, and within 10 miles of, a railroad already built or in course of construction, it must be shown wherein the public interest will be promoted by the proposed road. Where the Interstate Commerce Commission has passed on this point, a certified copy of its findings must be filed with the application.

(f) The applicant must certify that the road is to be operated as a common carrier of passengers and freight.

(g) The applicant shall execute and file, in duplicate, a stipulation obligating the company to use all precautions possible to prevent forest fires and to suppress such fires when they occur, to construct and maintain passenger and freight stations for each Government townsite, and to permit the crossing, in a manner satisfactory to the Government officials in charge, of the right-of-way by canals, ditches, and other projects.

(h) A railroad company may apply for sufficient land for ballast or material pits, reservoirs, or tree planting to aid in the construction or maintenance of the road. The authority to use any land for such purposes shall terminate upon abandonment or upon failure to use the land for such purposes for a continuous period of 2 years.

§ 161.24 Railroads in Oklahoma.

(a) The Act of February 28, 1902 (32 Stat. 43), authorizes right-of-way grants across tribal and individually owned land in Oklahoma. Rights-of-way granted under that act shall be subject to the provisions of this section as well as other pertinent sections of this Part 161. Except when otherwise determined by the Secretary, railroad rights-of-way in Oklahoma granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), shall also be subject to the provisions of this section.

(b) One copy on tracing linen of the map of definite location showing the line of route and all lands included within the right-of-way must be filed with the Secretary. When tribal lands are involved, a copy of the map must also be filed with the tribal council.

(c) Before any railroad may be constructed or any lands taken or condemned for any of the purposes set forth in section 13 of the Act of February 28, 1902 (32 Stat. 47), full damages shall be paid to the Indian owners.

(d) After the maps have been filed, the matter of damages shall be negotiated by the applicant directly with the Indian owners. If an amicable settlement cannot be reached, the amount to be paid as compensation and damages shall be fixed and determined as provided in the statute. If court proceedings are instituted, the facts shall be reported immediately as provided in § 161.21.

§ 161.25 Oil and gas pipelines.

(a) The Act of March 11, 1904 (33 Stat. 65), as amended by the Act of March 2, 1917 (39 Stat. 973; 25 U.S.C. 321), authorizes right-of-way grants for oil and gas pipelines across tribal, individually owned and Government-owned land. Rights-of-way granted under that act shall be subject to the provisions of this section as well as other pertinent sections of this Part 161. Except when otherwise determined by the Secretary, rights-of-way granted for such purposes under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328) shall also be subject to the provisions of this section.

(b) Rights-of-way, granted under aforesaid Act of March 11, 1904, as amended, for oil and gas pipelines, pumping stations or tank sites shall not extend beyond a term of 20 years and may be extended for another period of not to exceed 20 years following the procedures set out in § 161.19 of this part.

(c) All oil or gas pipelines, including connecting lines, shall be buried a sufficient depth below the surface of the land so as not to interfere with cultivation. Whenever the line is laid under a road or highway, the right-of-way for which has been granted under an approved application pursuant to an act of Congress, its construction shall be in compliance with the applicable Federal and State laws; during the period of construction, at least one-half the width of the road shall be kept open to travel; and, upon completion, the road or highway shall be restored to its original condition and all excavations shall be refilled. Whenever the line crosses a ravine, canyon, or waterway, it shall be laid below the bed thereof or upon such superstructure as will not interfere with the use of the surface.

(d) The size of the proposed pipeline must be shown in the application, on the maps, and in the engineer's affidavit and applicant's certificate. The application and maps shall specify whether the pipe is welded, screw-joint, dresser, or other type of coupling. Should the grantee of an approved right-of-way desire at any time to lay additional line or lines of pipe in the same trench, or to replace the original line with larger or smaller pipe, written permission must first be obtained from the Secretary and all damages to be sustained by the owners must be paid in advance in the amount fixed and determined by the Secretary.

(e) Applicants for oil or gas pipeline rights-of-way may apply for additional

land for pumping stations or tank sites. The maps shall show clearly the location of all structures and the location of all lines connecting with the main line. Applicants for lands for pumping stations or tank sites shall execute and file a stipulation agreeing as follows:

(1) Upon abandonment of the right-of-way to level all dikes, fire-guards, and excavations and to remove all concrete masonry foundations, bases, and structural works and to restore the land as nearly as may be possible to its original condition.

(2) That a grant for pumping station or tank site purposes shall be subservient to the owner's right to remove or authorize the removal of oil, gas, or other mineral deposits; and that the structures for pumping station or tank site will be removed or relocated if necessary to avoid interference with the exploration for or recovery of oil, gas, or other minerals.

(f) Purely lateral lines connecting with oil or gas wells on restricted lands may be constructed upon filing with the Secretary a copy of the written consent of the Indian owners and a blueprint copy of a map showing the location of the lateral. Such lateral lines may be of any diameter or length, but must be limited to those used solely for the transportation of oil or gas from a single tract of tribal or individually owned land to another lateral or to a branch of the main line.

(g) The applicant, by accepting a pipeline right-of-way, thereby agrees that the books and records of the applicant shall be open to inspection by the Secretary at all reasonable times, in order to obtain information pertaining in any way to oil or gas produced from tribal or individually owned lands or other lands under the jurisdiction of the Secretary.

§ 161.26 Telephone and telegraph lines; radio, television, and other communications facilities.

(a) The Act of February 15, 1901 (31 Stat. 790), as amended by the Act of March 4, 1940 (54 Stat. 41; 43 U.S.C. 959); the Act of March 4, 1911 (36 Stat. 1253), as amended by the Act of May 27, 1952 (66 Stat. 95; 43 U.S.C. 961); and the Act of March 3, 1901 (31 Stat. 1083; 25 U.S.C. 319), authorize right-of-way grants across tribal, individually owned, and Government-owned land for telephone and telegraph lines and offices, for poles and lines for communication purposes, and for radio, television, and other forms of communication transmitting, relay, and receiving structures and facilities. Rights-of-way granted under these acts shall be subject to the provisions of this section as well as other pertinent sections of this Part 161. Except when otherwise determined by the Secretary, rights-of-way granted for such purposes under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323–328), shall also be subject to the provisions of this section.

(b) A right-of-way granted under the said Act of March 4, 1911, as amended, shall be limited to a term not exceeding 50 years from the date of the issuance of such grant.

(c) No right-of-way shall be granted for a width in excess of 50 feet on each side of the centerline, unless special requirements are clearly set forth in the application which fully justify a width in excess of 50 feet on each side of the centerline.

(d) Applicants engaged in the general telephone and telegraph business may apply for additional land for office sites. The maps showing the location of proposed office sites shall be filed separately from those showing the line of route, and shall be drawn to a scale of 50 feet to an inch. Such maps shall show enough of the line of route to indicate the position of the tract with reference thereto. The tract shall be located with respect to the public survey as provided in § 161.8, and all buildings or other structures shall be platted on a scale sufficiently large to show clearly their dimensions and relative positions.

(e) Rights-of-way for poles and lines for communication purposes, and for radio, television, and other forms of communication transmitting, relay, and receiving structures and facilities, shall be limited to 200 feet on each side of the centerline of such lines and poles; radio and television, and other forms of communication transmitting, relay, and receiving structures and

facilities shall be limited to an area not to exceed 400 feet by 400 feet.

§ 161.27 Power projects.

(a) The Act of March 4, 1911 (36 Stat. 1253), as amended by the Act of May 27, 1952 (66 Stat. 95; 43 U.S.C. 961), authorizes right-of-way grants across tribal, individually owned and Government-owned land for electrical poles and lines for the transmission and distribution of electrical power. Rights-of-way granted under that act shall be subject to the provisions of this section as well as other pertinent sections of this Part 161. Except when otherwise determined by the Secretary, rights-of-way granted for such purposes under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323—328) shall also be subject to the provisions of this section.

(b) All applications, other than those made by power-marketing agencies of the Department of the Interior, for authority to survey, locate, or commence construction work on any project for the generation of electric power, or the transmission or distribution of electrical power of 66 kV or higher involving Government-owned lands shall be referred to the Office of the Assistant Secretary of the Interior for Water and Power Resources or such other agency as may be designated for the area involved, for consideration of the relationship of the proposed project to the power development program of the United States. Where the proposed project will not conflict with the program of the United States, the Secretary, upon notification to the effect, may then proceed to act upon the application. In the case of necessary changes respecting the proposed location, construction, or utilization of the project in order to eliminate conflicts with the power development program of the United States, the Secretary shall obtain from the applicant written consent to or compliance with such requirements before taking further action on the application.

(c) A right-of-way granted under the said Act of March 4, 1911, as amended, shall be limited to a term not exceeding 50 years from the date of the issuance of such grant.

(d) Rights-of-way for power lines shall be limited to those widths which can be justified and in no event shall exceed a width of 200 feet on each side of the centerline.

(e) The applicant shall make provision, or bear the reasonable cost (as may be determined by the Secretary) of making provision, for avoiding inductive interference between any project transmission line or other project works constructed, operated, or maintained by it on the right-of-way authorized under the grant and any radio installation, telephone line, or other communication facilities now or hereafter constructed and operated by the United States or any agency thereof. This provision shall not relieve the applicant from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

(f) An applicant for a right-of-way for a transmission line across Government-owned lands having a voltage of 66 kV or more must, in addition to the stipulation required by § 161.5, execute and file with its application a stipulation agreeing to accept the right-of-way grant subject to the following conditions:

(1) The applicant agrees that, in the event it becomes necessary for the United States to acquire the applicant's transmission line or facilities constructed on or across such right-of-way, the United States reserves the right to acquire such line or facilities at a sum to be determined upon by a representative of the applicant, a representative of the Secretary of the Interior, and a third representative to be selected by the other two for the purpose of determining the value of such property thus to be acquired by the United States.

(2) To allow the Department of the Interior to utilize for the transmission of electrical power any surplus capacity of the line in excess of the capacity needed by the holder of the grant for the transmission of electrical power in connection with the applicant's operations, or to increase the capacity of the line at the Department's expense and to utilize the increased capacity for the transmission of electrical power. Utilization by the Department

of surplus or increased capacity shall be subject to the following terms and conditions:

(i) When the Department desires to utilize surplus capacity thought to exist in a line, notification will be given to the applicant and the applicant shall furnish to the Department within 30 days a certificate stating whether the line has any surplus capacity not needed by the applicant for the transmission of electrical power in connection with the applicant's operations, and, if so, the extent of such surplus capacity.

(ii) In order to utilize any surplus capacity certified by the applicant to be available, or any increased capacity provided by the Department at its own expense, the Department may interconnect its transmission facilities with the applicant's line in a manner conformable to approved standards of practice for the interconnection of transmission circuits.

(iii) The expense of interconnection will be borne by the Department, and the Department will at all times provide and maintain adequate switching, relaying, and protective equipment so as to insure that the normal and efficient operation of the applicant's line will not be impaired.

(iv) After any interconnection is completed, the applicant shall operate and maintain its line in good condition; and, except in emergencies, shall maintain in a closed position all connections under the applicant's control between the applicant's line and the interconnecting facilities provided by the Department.

(v) The interconnected power systems of the Department and the applicant will be operated in parallel.

(vi) The transmission of electrical power by the Department over the applicant's line will be effected in such manner and quantity as will not interfere unreasonably with the applicant's use and operation of the line in accordance with the applicant's normal operating standards, except that the Department shall have the exclusive right to utilize any increased capacity of the line which has been provided at the Department's expense.

(vii) The applicant will not be obligated to allow the transmission over its line by the Department of electrical power to any person receiving service from the applicant on the date of the filing of the application for a grant, other than persons entitled to statutory preference in connection with the distribution and sale of electrical power by the Department.

(viii) The Department will pay to the applicant an equitable share of the total monthly cost of maintaining and operating the part of the applicant's line utilized by the Department for the transmission of electrical power, the payment to be an amount in dollars representing the same proportion of the total monthly operation and maintenance cost of such part of the line as the maximum amount in kilowatts of the power transmitted on a scheduled basis by the Department over the applicant's line during the month bears to the total capacity in kilowatts of that part of the line. The total monthly cost may include interest and amortization, in accordance with the system of accounts prescribed by the Federal Power Commission, on the applicant's net total investment (exclusive of any investment by the Department) in the part of the line utilized by the Department.

(ix) If, at any time subsequent to a certification by the applicant that surplus capacity is available for utilization by the Department, the applicant needs for the transmission of electrical power in connection with its operations the whole or any part of the capacity of the line theretofore certified as being surplus to its needs, the applicant may modify or revoke the previous certification by giving the Secretary of the Interior 30 months' notice, in advance, of the applicant's intention in this respect. After the revocation of a certificate, the Department's utilization of the particular line will be limited to the increased capacity, if any, provided by the Department at its expense.

(x) If, during the existence of the grant, the applicant desires reciprocal accommodations for the transmission of electrical power over the interconnecting system of the Department to its line, such reciprocal accommodations will be accorded under terms and conditions similar to those prescribed

in this paragraph with respect to the transmission by the Department of electrical power over the applicant's line.

(xi) The terms and conditions prescribed in this paragraph may be modified at any time by means of a supplemental agreement negotiated between the applicant and the Secretary of the Interior or his designee.

(g) Applicants may apply for additional lands for generating plants and appurtenant facilities. The lands desired for such purposes may be indicated on the maps showing the definite location of the right-of-way, but separate maps must be filed therefor. Such maps shall show enough of the line of route to indicate the position of the tract with respect to said line. The tract shall be located with respect to the public survey as provided in § 161.8, and all buildings or other structures shall be platted on a scale sufficiently large to show clearly their dimensions and relative positions.

[33 FR 19803, Dec. 27, 1968, as amended at 38 FR 14680, June 4, 1973]

§ 161.28 Public highways.

(a) The appropriate State or local authorities may apply under the regulations in this Part 161 for authority to open public highways across tribal and individually owned lands in accordance with State laws, as authorized by the Act of March 3, 1901 (31 Stat. 1084; 25 U.S.C. 311).

(b) In lieu of making application under the regulations in this Part 161, the appropriate State or local authorities in Nebraska or Montana may, upon compliance with the requirements of the Act of March 4, 1915 (38 Stat. 1188), lay out and open public highways in accordance with the respective laws of those States. Under the provisions of that act, the applicant must serve the Secretary with notice of intention to open the proposed road and must submit a map of definite location on tracing linen showing the width of the proposed road for the approval of the Secretary prior to the laying out and opening of the road.

(c) Applications for public highway rights-of-way over and across roadless and wild areas shall be considered in accordance with the regulations contained in Part 163 of this chapter.

PART 162—ROADS OF THE BUREAU OF INDIAN AFFAIRS

CONSTRUCTION AND MAINTENANCE OF ROADS

Sec.
162.1 Purpose.
162.2 Definitions.
162.3 Construction and improvement.
162.4 Approval of road construction activities.
162.4a Selection of road construction projects.
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162.5a Employment of Indians.
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PUBLIC HEARINGS ON ROAD PROJECTS

162.10 Purpose and objectives.
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CONSTRUCTION AND MAINTENANCE OF ROADS

AUTHORITY: 36 Stat. 861; 78 Stat. 241, 253, 257; 45 Stat. 750 (25 U.S.C. 47; 42 U.S.C. 2000e(b), 2000e-2(i); 23 U.S.C. 101(a), 208, 308), unless otherwise noted.

SOURCE: §§ 162.1-162.9, 39 FR 27132, July 25, 1974, unless otherwise noted.

§ 162.1 Purpose.

The regulations in this part govern the planning, design, construction, maintenance and general administration of certain Indian reservation roads and bridges.

§ 162.2 Definitions.

As used in this part:

(a) "Commissioner" means the Commissioner of Indian Affairs.

(b) "Superintendent" means the Agency Superintendent at all locations, with the exception that at the Navajo Reservation this term shall mean the Area Director or his designated representative for public hear-

ings on arterial roads which cross Agency boundaries of jurisdiction.

(c) "State" means a State or territory or political subdivision thereof.

(d) "Indian Reservation Roads and Bridges" means roads and bridges that are located within or provide access to an Indian reservation or Indian trust land or restricted Indian land which is not subject to fee title alienation without the approval of the Federal Government, or Indian and Alaska Native villages, groups or communities in which Indians and Alaskan Natives reside, whom the Commissioner has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians. (23 U.S.C. 101(a))

(e) "Indian and Alaskan Native villages, groups, or communities in which Indian or Alaska Natives reside" means villages, groups or communities or portions of villages, groups, or communities in which the majority of the residents are Indians or Alaska Natives.

(f) "Federal-Aid Indian Road System" means those Indian reservation roads and bridges for which financial aid for construction is available only from specific appropriations of Federal funds therefor and which are designated by the Bureau of Indian Affairs and the Federal Highway Administration. This term does not include roads or bridges on Indian reservations for which financial aid for construction and improvement is available to a State under the Federal-Aid Highway Act. (45 Stat. 750)

(g) "Construction" means supervising, inspecting, actual building, and all expenses incidental to the construction and improvement of roads and bridges including the elimination of roadway hazards and the acquisition of rights-of-way.

(h) "Maintenance" means the act of preserving the entire roadway, including surface, shoulders, roadsides, structures, and the necessary traffic control devices as nearly as possible in the as-built condition and to provide services for the satisfactory and safe use of such roads.

§ 162.3 Construction and improvement.

Subject to the availability of appropriations for Indian reservation roads and bridges and any other contribution of State or Indian tribal lands, the Commissioner shall plan, survey, design and construct roads on the Federal-Aid Indian Road System to provide an adequate system of road facilities serving Indian lands.

§ 162.4 Approval of road construction activities.

The Secretary of Transportation or his authorized representative shall approve the location, type, and design of all projects on the Federal-Aid Indian Road System before any construction expenditures are made. All such construction shall be under the general supervision of the Secretary of Transportation or his authorized representative.

(23 U.S.C. 208)

§ 162.4a Selection of road construction projects.

The Commissioner, who is responsible for the planning, surveys and design, shall keep the appropriate local tribal officials informed of all technical information relating to the project alternatives of proposed road developments. The Commissioner shall recommend to the tribe those proposed road projects having the greatest need as determined by the comprehensive transportation analysis. Tribes shall then establish annual priorities for road construction projects. Subject to the approval of the Commissioner, the annual selection of road projects for construction shall be performed by tribes. Funds available for the construction of roads on the Federal-Aid Indian Road System shall not be used for the capital improvement to privately-owned property. (39 Stat. 355)

§ 162.5 Rights-of-way.

(a) The procedure for obtaining permission to survey and for granting any necessary right-of-way are governed by Part 161 of this chapter. Tribal consent as required under § 161.3(a) may be made by public dedication where proper tribal authority exists.

Before any work is undertaken for the construction of road projects, the Commissioner shall obtain the written consent of the Indian landowners. Where an Indian has an interest in tribal land by virtue of a land use assignment, such consent shall be obtained from both the landholder of the assignment and the Indian tribe. Right-of-way easements are to be on a form approved by the Commissioner.

(b) If it appears that the road might be transferred to the tribe, the county or the State within 10 years, then before such construction is undertaken, right-of-way easements for the project shall be obtained in favor of the United States, its successors and assigns, with the right to construct, maintain, and repair improvements thereon and thereover, for such purposes and with the further right in the United States, its successors and assigns, to transfer the right-of-way easements by assignment, grant or otherwise.

§ 162.5a Employment of Indians.

The Bureau of Indian Affairs road program shall be administered in such a way as to provide training and employment of Indians. The Commissioner may contract with tribes and Indian-owned construction companies, or the Commissioner may purchase materials, obtain equipment and employ Indian labor in the construction and maintenance of roads.

(36 Stat. 861; 78 Stat. 241, 253; 78 Stat. 257; 25 U.S.C. 47; 42 U.S.C. 2000e(b), 2000e-2(i); 23 U.S.C. 208(c))

§ 162.6 Maintenance of Indian roads.

The administration and maintenance of Indian reservation roads and bridges is basically a function of the local Government. Subject to the availability of funds, the Commissioner shall maintain, or cause to be maintained, those approved roads on the Federal-Aid Indian Road System. The Commissioner may also maintain roads not on the Federal-Aid Indian Road System if such roads meet the definition of "Indian reservation road and bridges" and are approved for maintenance by the Commissioner. No funds authorized under 23 U.S.C. section 208 are available for the maintenance of roads.

§ 162.6a Contributions from tribes.

The Commissioner may enter into agreements with an Indian tribe for a contribution from its tribal funds for the construction or maintenance of roads governed by regulations of this part. However, the tribe must be able to make such contributions without undue impairment of the necessary tribal functions.

§ 162.7 Cooperation with States.

The Commissioner may enter into an agreement with the State for cooperation in the construction and the maintenance of certain Indian reservation roads and bridges, especially at those locations where road projects serve non-Indian land as well as Indian land.

(23 U.S.C. 208(d); 23 U.S.C.308(a))

§ 162.8 Use of roads.

(a) Free public use is required on roads eligible for construction and maintenance with Federal funds under this part. When required for public safety, fire prevention or suppression, or fish or game protection, or to prevent damage to unstable roadbed, the Commissioner may restrict the use of them or may close them to public use.

(b) The Commissioner shall conduct engineering and traffic analysis in accordance with established traffic engineering practices and determine the necessary maximum speed limit, maximum vehicular weight limit and other needed regulatory signs for roads which he maintains. The Commissioner shall make recommendations to local Government officials, who are authorized to enact and enforce ordinances on Indian lands, of his determination of the needed regulatory signs. Such regulatory signs as are authorized by established ordinances shall be erected by the Commissioner. At locations under the jurisdiction of the Court of Indian Offenses the Commissioner shall erect such regulatory signs as he determines are needed.

§ 162.9 Roadless and wild areas.

Roads passable to motor transportation shall not be constructed under the regulations in this part within the boundaries of the roadless and wild areas established in Part 163 of this chapter.

Public Hearings on Road Projects

Authority: 45 Stat. 750; 25 U.S.C. 318a. Interpret or apply Sec. 6, 49 Stat. 1521, as amended; 25 U.S.C. 318b.

Source: §§ 162.10—162.19, 39 FR 12733, Apr. 8, 1974, unless otherwise noted.

§ 162.10 Purpose and objectives.

The regulations in this subpart govern the calling and conducting of public hearings on Bureau of Indian Affairs road projects beginning with road projects scheduled to begin construction in Fiscal Year 1975, and thereafter. In order to promote coordination and comprehensive planning of construction activities on Indian reservations, the objectives for conducting public hearings on proposed road projects are to:

(a) Inform interested persons of the road proposals which affect them and allow such persons to express their views at those stages of a project's development when the flexibility to respond to these views still exists.

(b) Insure that road locations and designs are consistent with the reservations' objectives and with applicable Federal regulations.

§ 162.11 Criteria.

A public hearing shall be held for each project that:

(a) Is a new route being constructed,

(b) Would significantly change the layout or function of connecting or related roads or streets,

(c) Would have an adverse effect upon adjacent real property, or

(d) Is expected to be of a controversial nature.

§ 162.12 Need for public hearing determined.

The Superintendent will call a meeting of representatives from the tribe, the Bureau of Indian Affairs, and other appropriate agencies to determine for each road project if a public hearing is needed. The determination will be based on the criteria given in § 162.11. More than one public hearing may be held for a project if necessary.

§ 162.13 Notice of road construction projects.

When no public hearing is scheduled for a road construction project, notice of the road construction project must be given at least 90 days before the date construction is scheduled to begin. Such notice should give the project name and location, the type of improvement planned, the date construction is scheduled to start, and the name and address of the office where more information can be obtained. The notice should be posted or published as determined by the Superintendent.

§ 162.14 Notice of public hearing.

Notice will be given to inform the local public of the scheduled hearing. The notice should give the date, time, and place of the scheduled hearing; the project location; the proposed work to be done; the place where the preliminary plans may be reviewed; and the place where more information on the project can be obtained. The notice should be posted or published as determined by the Superintendent. Notice should be given at least 15 days before the scheduled date of the public hearing and again, at least 5 days before the hearing date.

§ 162.15 Record of hearing proceedings.

A record of the hearing shall be made. The record shall include written statements submitted at the hearing or within 5 days following the hearing.

§ 162.16 Conducting the public hearing.

(a) The Superintendent will appoint a tribal or Bureau of Indian Affairs official to preside at the public hearing and to maintain a medium for free and open discussion designed to reach early and amicable resolution of issues.

(b) The Superintendent shall be responsible for maintaining a record of the hearing and shall make arrangements for appropriate officials to be present at the hearing to be responsive to questions which may arise.

(c) The purpose of the hearing and an agenda of items to be discussed should be presented at the beginning of the hearing. It should be made clear at the hearing that the tribal chairman or his designated roads committee are the officials responsible for setting reservation road priorities and considering the merits of one road project over another. Sufficient maps and project plans will be available at the hearing for public review. The hearing audience should be informed of the Bureau's road construction and right-of-way acquisition procedures on reservations. If the project will require relocating residences or businesses, information on relocation services and authorized payments will be given.

§ 162.17 Written statements.

Written statements may be submitted as well as oral statements made at the public hearing. Written statements may also be submitted during the 5 days following the hearing.

§ 162.18 Hearing statement.

If significant issues develop at the public hearing which remain unresolved, the Superintendent will issue a hearing statement summarizing the results of the public hearing and his determination as to the further action to be taken in connection with the proposed project. The hearing statement shall be issued within 20 days of the date of the public hearing. The hearing statement will be posted at the place where the hearing was held, and shall be sent to interested persons upon request. The hearing statement will outline procedures whereby the determination may be appealed.

§ 162.19 Appeals.

Any determination concerning the proposed road project may be appealed in accordance with the procedures set forth in Part 2 of this Title.

PART 163—ESTABLISHMENT OF ROADLESS AND WILD AREAS ON INDIAN RESERVATIONS

Sec.

163.1 Definition of roadless area.
163.3 Roads prohibited.

CROSS REFERENCE: For general regulations pertaining to the construction of roads, see Part 162 of this chapter.

§ 163.1 Definition of roadless area.

A roadless area has been defined as one which contains no provision for the passage of motorized transportation and which is at least 100,000 acres in extent. Under this definition the Secretary of the Interior ordered (3 FR 609, Mar. 22, 1938) certain roadless areas established on Indian reservations. The following is the only presently existing roadless area:

Name of area—Wind River Reserve.
Reservation—Shoshone.
State—Wyoming.
Approximate acreage—180,387

(a) The boundaries of the Wind River Reserve roadless area are as follows:

WIND RIVER MERIDIAN, WYO.

Starting at the SW corner of sec. 22, T. 2 S., R. 3 W., on the south boundary of the Wind River Indian Reservation, thence north six (6) miles to the NE corner of sec. 28, T. 1 S., R. 3 W., thence west three (3) miles to the SW corner of sec. 19, T. 1 S., R. 3 W., thence north four (4) miles along range line to the Wind River Base Line, thence west one (1) mile along Wind River Base Line to the SW corner of Sec. 36, T. 1 N., R. 4 W., thence north six (6) miles to the NW corner of sec. 1, T. 1 N., R. 4 W., thence west five (5) miles along township line to the NE corner of sec. 1, T. 1 N., R. 5 W., thence north four and one-half (4½) miles along range line to the NE corner of the SE ¼ of sec. 12, T. 2 N., R. 5 W., thence west one and one-half (1½) miles to the center of sec. 11, T. 2 N., R. 5 W., thence on a straight line in a northwesterly direction to the top of Bold Mountain, thence on a straight line to the SE corner of sec. 35, T. 4 N., R. 6 W., thence west one (1) mile along township line to the SW corner of sec. 35, T. 4 N., R. 6 W., thence north two (2) miles to the NW corner of sec. 26, T. 4 N., R. 6 W., thence on a straight line in a northwesterly direction to the point where the north line of sec. 15, T. 4 N., R. 6 W. intersects the west boundary of the reservation, thence south, southeasterly and east along the reservation boundary to point of beginning.

(5 U.S.C. 301)

[30 FR 9813, Aug. 6, 1965]

§ 163.3 Roads prohibited.

(a) Within the boundaries of this officially designated roadless area it will

be the policy of the Interior Department to refuse consent to the construction or establishment of any routes passable to motor transportation, including in this restriction highways, roads, truck trails, work roads, and all other types of ways constructed to make possible the passage of motor vehicles either for transportation of people or for the hauling of supplies and equipment, unless the requirements of fire protection, commercial use for the Indians' benefit or actual needs of the Indians clearly demand otherwise.

(b) Foot trails and horse trails are not barred. The Superintendent of the Wind River Reservation on which this roadless area has been established will be held strictly accountable for seeing that the area is maintained in a roadless condition. Elimination of this area or any part thereof from the restriction of this order will be made only upon a written showing of an actual and controlling need.

(5 U.S.C. 301)

[30 FR 9814, Aug. 6, 1965]

CROSS REFERENCE: For rights-of-way for highways over Indian lands, see Part 161 of this chapter.

SUBCHAPTER P—MINING

PART 171—LEASING OF TRIBAL LANDS FOR MINING

Sec.
171.1 Definitions.

How to Acquire Leases

171.1a Exisiting permits or leases on minerals acquired for the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, and the Pueblos of Zia and Jemez, New Mexico.
171.2 Leases to be made by tribes.
171.3 Sale of oil and gas leases.
171.3a Leases for subsurface storage of oil or gas.
171.4 Government employees cannot acquire leases.
171.5 Corporations and corporate information.
171.6 Bonds.
171.7 Lessees to furnish additional information.
171.8 Lands to be in compact body.
171.9 Acreage limitation.
171.10 Term of leases.
171.11 Government reserves right to buy minerals produced.

Rents and Royalties

171.12 Manner of payments.
171.13 Rates of rentals and royalties under oil and gas leases.
171.14 Annual rentals and expenditures for development on leases other than oil and gas.
171.14a. Suspension of operations and production on leases for minerals other than oil and gas.
171.15 Royalty rates for minerals other than oil and gas.
171.16 Time of making royalty payments.
171.17 Division orders.
171.18 Inspection of premises, books and accounts.
171.19 Diligence and prevention of waste.
171.20 Permission to start operations.
171.21 Restrictions on operations.
171.22 Penalties.
171.23 Mines to be timbered properly.
171.24 Surrender of leased premises in good condition.
171.25 Fees.
171.26 Assignments and overriding royalties.
171.27 Cancellation.
171.27a Prospecting permits.
171.28 Effective date of regulations.
171.29 Exemption of leases made by organized tribes.
171.30 Forms.

Authority: Secs. 16, 17, 48 Stat. 987, 988, sec. 9, 49 Stat. 1968, sec. 4, 52 Stat. 348; 25 U.S.C. 396d, 476, 477, 509. Interpret or apply secs. 1, 2, 49 Stat. 1250; 48 U.S.C. 358a, 362, unless otherwise noted.

Source: 22 FR 10588, Dec. 24, 1957, unless otherwise noted.

§ 171.1 Definitions.

(a) The term "superintendent" in this part refers to the superintendent or other officer of the Bureau of Indian Affairs or of the Government who may have jurisdiction over the lands involved.

(b) The term 'supervisor" in this part refers to a representative of the Secretary of the Interior, under direction of the United States Geological Survey, authorized and empowered to supervise and direct operations under oil and gas or other mining leases, to furnish scientific and technical information and advice, to ascertain and record the amount and value of production, and to determine and record rentals and royalties due and paid.

Cross Reference: For rules and regulations of the Geological Survey, see 30 CFR Chapter II.

How to Acquire Leases

§ 171.1a Existing permits or leases on minerals acquired for the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, and the Pueblos of Zia and Jemez, New Mexico.

By the Act of July 14, 1956 (70 Stat. 546), title to the minerals underlying certain lands in Utah was vested in the United States in trust for the Ute Indian Tribe of the Uintah and Ouray Reservation and by the Act of August 2, 1956 (70 Stat. 941), title to certain land in New Mexico and the improvements thereon was declared to be in the United States of America in trust for the Pueblos of Zia and Jemez, subject to valid and existing rights. Existing mineral prospecting permits and mining leases on these lands issued pursuant to 43 CFR and all action on the permits and leases shall be administered by the Secretary of the Interior or his authorized representative in

accordance with the regulations set forth in Title 43 of the Code of Federal Regulations, except as follows:

(a) Appeals from administrative action shall be made pursuant to applicable regulations set forth in this title.

(b) Payments or reports required by the leases, permits, or regulations in 43 CFR shall be made to the Superintendent having jurisdiction over the land involved instead of the officer of the Bureau of Land Management designated in Title 43 of the Code of Federal Regulations.

[25 FR 12408, Dec. 3, 1960]

§ 171.2 Leases to be made by tribes.

Indian tribes, bands or groups may, with the approval of the Secretary of the Interior or his authorized representative, lease their land for mining purposes. No oil and gas lease shall be approved unless it has first been offered at an advertised sale in accordance with § 171.3. Leases for minerals other than oil and gas shall be advertised for bids as prescribed in § 171.3 unless the Commissioner grants to the Indian owners written permission to negotiate for a lease. Negotiated leases, accompanied by proper bond and other supporting papers, shall be filed with the Superintendent of the appropriate Indian Agency within 30 days after such permission shall have been granted by the Commissioner to negotiate the lease. The appropriate Area Director is authorized in proper cases to grant a reasonable extension of this period prior to its expiration. The right is reserved to the Secretary of the Interior to direct that negotiated leases be rejected and that they be advertised for bids. All leases shall be approved by the Secretary of the Interior or his duly authorized representative.

[23 FR 9393, Dec. 4, 1958]

§ 171.3 Sale of oil and gas leases.

(a) At such times and in such manner as he may deem appropriate, after being authorized by the tribal council or other authorized representative of the tribe, the superintendent shall publish notices at least thirty days prior to the sale, unless a shorter period is authorized by the Commissioner of Indian Affairs, that oil and gas leases on specific tracts, each of which shall be in a reasonably compact body, will be offered to the highest responsible bidder for a bonus consideration, in addition to stipulated rentals and royalties. Each bid must be accompanied by a cashier's check, certified check or postal money order, payable to the payee designated in the invitation to bid, in an amount not less than 25 percent of the bonus bid. Within 30 days after notification of being the successful bidder, said bidder must remit the balance of the bonus, the first year's rental, and his share of the advertising costs, and shall file with the superintendent the lease in completed form. The superintendent may, for good and sufficient reasons, extend the time for the completion and submission of the lease form, but no extension shall be granted for remitting the balance of moneys due. If the successful bidder fails to pay the full consideration within said period, or fails to file the completed lease within said period or extension thereof, or if the lease is disapproved through no fault of the lessor or the Department of the Interior, 25 percent of the bonus bid will be forfeited for the use and benefit of the Indian lessor.

(b) All notices or advertisements of sales of oil and gas leases shall reserve to the Secretary of the Interior the right to reject all bids when in his judgment the interests of the Indians will be best served by so doing, and that if no satisfactory bid is received, or if the accepted bidder fails to complete the lease, or if the Secretary of the Interior shall determine that it is unwise in the interests of the Indians to accept the highest bid, the Secretary may readvertise such lease for sale, or if deemed advisable, with the consent of the tribal council or other governing tribal authorities, a lease may be made by private negotiations. The successful bidder or bidders will be required to pay his or their share of the advertising costs. Amounts received from unsuccessful bidders will be returned; but when no bid is accepted on a tract, the costs of advertising will be assessed against the applicant

who requested that said tract be advertised.

[22 FR 10588, Dec. 24, 1957, as amended at 23 FR 7068, Sept. 12, 1958]

§ 171.3a Leases for subsurface storage of oil or gas.

(a) The Secretary of the Interior, or his authorized representative, may approve, subject to obtaining the prior consent of the Indian owners, storage leases, or modifications, amendments, or extensions of oil and gas or other mining leases, on tribal lands subject to lease under the Act of May 11, 1938 (52 Stat. 347; 25 U.S.C. 396a), and on allotted lands subject to lease under the Act of March 3, 1909 (35 Stat. 783; 25 U.S.C. 396), to provide for the subsurface storage of oil or gas, irrespective of the lands from which production is initially obtained. The storage lease, or modification, amendment, or extension, shall provide for the payment of such storage fee or rental on such oil or gas as may be determined adequate in each case, or, in lieu thereof, for a royalty other than that prescribed in the oil and gas lease when such stored oil and gas is produced in conjunction with oil or gas not previously produced.

(b) The Secretary of the Interior or his authorized representative may approve, subject to obtaining the prior consent of the Indian owners, a provision in an oil and gas lease, under which storage of oil and gas is authorized, for continuance of the lease at least for the period of such storage use and so long thereafter as oil or gas not previously produced is produced in paying quantities.

(c) Applications for subsurface storage of oil or gas shall be filed in triplicate with the oil and gas supervisor and shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental, or royalty offered to be paid for such storage, and all essential information showing the necessity for such project. Enough copies of the final agreement signed by the Indian owners and other parties in interest shall be submitted for the approval of the Secretary, or his authorized representative, to permit retention of five copies by the Department after approval.

[25 FR 9836, Oct. 14, 1960]

§ 171.4 Government employees cannot acquire leases.

No lease, assignment thereof, or interest therein will be approved to any employee or employees of the United States Government whether connected with the Bureau of Indian Affairs or otherwise, and no employee of the Interior Department shall be permitted to acquire any interest in any mineral lease covering restricted Indian lands by ownership of stock in corporations having such leases or in any other manner.

(R.S. 2078; 25 U.S.C. 68)

§ 171.5 Corporations and corporate information.

If the applicant for a lease is a corporation, it shall file evidence of authority of its officers to execute papers; and with its first application it shall also file a certified copy of its articles of incorporation, and, if foreign to the State in which the lands are located, evidence showing compliance with the corporation laws thereof. Statements of changes in officers and stockholders shall be furnished by a corporation lessee to the superintendent January 1 of each year, and at such other times as may be requested. Whenever deemed advisable in any case the superintendent may require a corporation applicant or lessee to file:

(a) Lists of officers, principal stockholders, and directors, with post-office addresses and number of shares held by each.

(b) A sworn statement of the proper officer showing:

(1) The total number of shares of the capital stock actually issued and the amount of cash paid into the treasury on each share sold; or, if paid in property, the kind, quantity, and value of the same paid per share.

(2) Of the stock sold, how much remains unpaid and subject to assessment.

(3) The amount of cash the company has in its treasury and elsewhere.

(4) The property, exclusive of cash, owned by the company and its value.

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(5) The total indebtedness of the company and the nature of its obligations.

(6) Whether the applicant or any person controlling, controlled by or under common control with the applicant has filed any registration statement, application for registration, prospectus or offering sheet with the Securities and Exchange Commission pursuant to the Securities Act of 1933 or the Securities Exchange Act of 1934 or said Commission's rules and regulations under said acts; if so, under what provisions of said acts or rules and regulations; and what disposition of any such statement, application, prospectus or offering sheet has been made.

(c) Affidavits of individual stockholders, setting forth in what corporations or with what persons, firms, or associations such individual stockholders are interested in mining leases on restricted lands within the State, and whether they hold such interests for themselves or in trust.

CROSS REFERENCE: For rules and regulations of the Securities and Exchange Commission, see 17 CFR Chapter II.

§ 171.6 Bonds.

(a) Lessee shall furnish with each lease a bond (Form 5-154b), and an assignee of a lease shall furnish with each assignment a bond (Form 5-154m), with an acceptable company authorized to act as sole surety, or with two or more personal sureties and a deposit as collateral security of any public-debt obligations of the United States guaranteed as to principal and interest by the United States, equal to the full amount of such bonds, or other collateral satisfactory to the Secretary of the Interior, or show ownership of unencumbered real estate of the value equal to twice the amount of the bonds. Lessee may file a bond on Form 5-154a without sureties and a deposit as collateral security of Government bonds equal in value to the full amount of the bond. Lease bonds shall not be less than the following amounts:

For less than 80 acres—$1,000
For 80 acres and less than 120 acres—1,500
For 120 acres and not more than 160 acres—2,000
For each additional 40 acres, or part thereof, above 160 acres—500

Provided, That for leases for minerals other than oil and gas the Secretary of the Interior or his authorized representative with the consent of the Indian landowner may authorize a bond for a lesser amount if, in his opinion, the circumstances warrant and the interests of the Indian landowners are fully protected: *Provided further*, That a lessee may file one bond (Form 5-154f), in the sum of $15,000 for all leases of minerals, in any one State and which may also include leases on that part of an Indian reservation extending into State contiguous thereto, to which the lessee may become a party: *And provided further*, That the total acreage covered by the bond shall not exceed 10,240 acres.

(b) In lieu of the bonds required under paragraph (a) of this section, a lessee may furnish a bond (Form 5-156) in the sum of $75,000 for full nationwide coverage with an acceptable company authorized to act as sole surety to cover all oil and gas leases and oil and gas prospecting permits without geographic or acreage limitation to which the lessee or permittee is or may become a party.

(c) The right is specifically reserved to increase the amount of bonds and the collateral security prescribed in paragraph (a) of this section in any particular case when the officer in charge deems it proper to do so. The nationwide bond may be increased at any time in the discretion of the Secretary of the Interior.

[22 FR 10588, Dec. 24, 1957, as amended at 26 FR 164, Jan. 10, 1961]

§ 171.7 Lessees to furnish additional information.

The superintendent may, either before or after approval of a lease, call for any additional information desired to carry out the regulations in this part. If a lessee shall fail to furnish the papers necessary to put his lease and bond in proper form for consideration, the superintendent shall forward such lease for disapproval.

§ 171.8 Lands to be in compact body.

The area covered by a lease shall be in a reasonably compact body and shall conform to the system of public-land surveys, except that leases covering lode ground may consist of one or more adjoining parallelograms 1,500 feet in length by 600 feet in width, as provided by the United States mining laws. No lease under the regulations in this part shall convey any extralateral rights, and no coal lease shall have a length exceeding 1 mile along the outcrop.

§ 171.9 Acreage limitation.

A lessee may acquire more than one lease but no single lease shall be granted for mining purposes on Indian tribal or restricted Indian lands, exclusive of Osage and Quapaw lands, in excess of the following acreage except where the rule of approximation applies:

(a) For oil and gas and all other minerals, except coal, 2,560 acres.

(b) (1) For coal, a lease shall ordinarily be limited to 2,560 acres. The Commissioner may, however, upon application, approve the combining of leases held by one or more lessees, or approve the issuance of a single lease for more than 2,560 acres in a reasonably compact form, if he shall find that the approval of such larger acreage is in the interest of the lessor and is necessary to permit the establishment or construction of thermal electric power plans or other industrial facilities on or near the reservation. He may prescribe provisions in such larger leases to require relinquishment of acreage in the event of failure to construct facilities, or may require advance rental or minimum royalty payments on a part of the acreage as a condition for combining leases or issuance of a single lease in excess of 2,560 acres.

(2) The Commissioner, with the consent of the lessor, may alter, change, or modify the development and producing requirements of the several leases and provide that operations and production on one lease shall be deemed to satisfy the development and producing requirements as to each lease combined.

§ 171.10 Term of leases.

Mining leases may be made for a specified term not to exceed ten years from the date of approval by the Secretary of the Interior, or his authorized representative, and as much longer as the substances specified in the lease are produced in paying quantities.

§ 171.11 Government reserves right to buy minerals produced.

In time of war or other public emergency all of the executive departments of the United States Government shall have the option to purchase at the posted market price on the date of sale all or any part of the substance or substances produced under any lease.

Rents and Royalties

§ 171.12 Manner of payments.

(a) Except where otherwise provided by the terms of leases where the tribes are organized under the act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461-479), all rents and other payments due under leases which have been or may be approved by the Secretary of the Interior shall be paid to the superintendent or to such other person as may be designated by the Secretary of the Interior, for the benefit of the lessors. Except advance payments for the first year which shall be sent direct to the superintendent at the time of filing leases, payments of rental and royalty under leases shall be transmitted through the supervisor, shall be accompanied by a statement by the lessee, in triplicate, showing the specific items of rental or royalty that the remittance is intended to cover, and shall be made at such time or times as the lease provides.

(b) In the event of the discovery of minerals in paying quantities all advance payments shall be allowed as credit on stipulated royalties for the year for which such advance payments have been made. No refund will be made under oil, gas, or other mining leases, in the event that royalty from production is not sufficient to equal the advance payment, nor will any part of the moneys so paid be refunded to the lessee because of any subsequent surrender or cancellation of the

lease, nor shall the lessee be relieved from the obligation to pay said advance rental annually when it becomes due, by reason of any subsequent surrender or cancellation of the lease.

§ 171.13 Rates of rentals and royalties under oil and gas leases.

(a) The lessee shall pay, beginning with the date of approval of oil and gas leases by the Secretary of the Interior, a rental of $1.25 per acre per annum in advance during the continuance thereof, together with a royalty of 12½ percent of the value or amount of all oil, gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and saved from the land leased, save and except oil, and/or gas used by the lessee for development and operation purposes on the lease, which oil or gas shall be royalty free. A higher rate of royalty may be fixed by the Secretary of the Interior or his authorized representative, prior to the advertisement of land for oil and gas leases. During the period of supervision, "value" for the purposes of the lease may, in the discretion of the Secretary of the Interior, be calculated on the basis of the highest price paid or offered (whether calculated on the basis of short or actual volume) at the time of production for the major portion of the oil of the same gravity, and gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and sold from the field where the leased lands are situated, and the actual volume of the marketable product less the content of foreign substances as determined by the supervisor. The actual amount realized by the lessee from the sale of said products may, in the discretion of the Secretary of the Interior, be deemed mere evidence of or conclusive evidence of such value. When paid in value, such royalties shall be due and payable monthly on the last day of the calendar month following the calendar month in which produced; when royalty on oil produced is paid in kind, such royalty oil shall be delivered in tanks provided by the lessee on the premises where produced without cost to the lessor unless otherwise agreed to by the parties thereto, at such time as may be required by the lessor. The lessee shall not be required to hold such royalty oil in storage longer than 30 days after the end of the calendar month in which said oil is produced. The lessee shall be in no manner responsible or held liable for loss or destruction of such oil in storage by causes beyond the lessee's control. In determining the value for royalty purposes of products, such as natural gasoline, that are derived from treatment of gas, a reasonable allowance for the cost of manufacture shall be made, such allowance to be two-thirds of the value of the marketable product unless otherwise determined by the Secretary of the Interior on application of the lessee or on his own initiative, and that royalty will be computed on the value of gas or casing-head gas, or on the products thereof (such as residue gas, natural gasoline, propane, butane, etc.), whichever is the greater.

(b) If the leased premises produce gas in excess of the lessee's requirements for the development and operation of said premises, then the lessor may use sufficient gas, free of charge, for any desired school or other buildings belonging to the tribe, by making his own connections to a regulator installed, connected to the well and maintained by the lessee, and the lessee shall not be required to pay royalty on gas so used. The use of such gas shall be at the lessor's risk at all times.

§ 171.14 Annual rentals and expenditures for development on leases other than oil and gas.

(a) Unless otherwise authorized by the Secretary or his authorized representative (1) a lease for minerals other than oil and gas shall provide for a yearly development expenditure of not less than $10 per acre and (2) all such leases shall provide for a rental payment of not less than $1 for each acre or fraction of an acre payable on or before the first day of each lease year.

(b) Within 20 days after the lease year, an itemized statement, in duplicate, of the expenditure for development under a lease for minerals other than oil and gas shall be filed with the Superintendent. The lessee must certify the statement under oath.

§ 171.14a Suspension of operations and production on leases for minerals other than oil and gas.

The Secretary of the Interior or his authorized representative, after obtaining the consent of the tribe, may authorize suspension of operating and producing requirements on mining leases for minerals other than oil and gas whenever during the primary term of the leases, it is considered that marketing facilities are inadequate or economic conditions unsatisfactory. Applications by lessees for relief from all operating and producing requirements on such mineral leases shall be filed in triplicate, in the office of the Regional Mining Supervisor of the Geological Survey and a copy thereof filed with the Superintendent. Complete information must be furnished showing the necessity for such relief. Suspension of operations and production shall not relieve the lessee from the obligations of continued payment of the annual rental or the minimum royalty.

[24 FR 9510, Nov. 26, 1959]

§ 171.15 Royalty rates for minerals other than oil and gas.

Unless otherwise authorized by the Commissioner of Indian Affairs, the minimum rates for minerals other than oil and gas shall be as follows:

(a) For substances other than gold, silver, copper, lead, zinc, tungsten, coal, asphaltum and allied substances, oil, and gas, the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 percent of the value, at the nearest shipping point, of all ores, metals, or minerals marketed.

(b) For gold and silver the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 percent to be computed on the value of bullion as shown by mint returns after deducting forwarding charges to the point of sale; and for copper, lead, zinc, and tungsten, a royalty of not less than 10 percent to be computed on the value of ores and concentrates as shown by reduction returns after deducting freight charges to the point of sale. Duplicate returns shall be filed by the lessee with the Superintendent within 10 days after the ending of the quarter or other period specified in the lease within which such returns are made: *Provided, however,* That the lessee shall pay a royalty of not less than 10 percent of the value of the ore or concentrates sold at the mine unless otherwise provided in the lease.

(c) For coal the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 cents per ton of 2,000 pounds of mine run, or coal as taken from the mine, including what is commonly called "slack".

(d) For asphaltum and allied substances the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 cents per ton of 2,000 pounds on crude material or not less than 60 cents per ton on refined substances.

§ 171.16 Time of making royalty payments.

Royalty payments under producing oil and gas leases shall be made monthly on or before the last day of the calendar month following the calendar month for which such payment is to be made.

§ 171.17 Division orders.

(a) Lessees may make arrangements with the purchasers of oil for the payment of the royalties to the superintendent by such purchasers, but such arrangement, if made, shall not operate to relieve a lessee from responsibility should the purchaser fail or refuse to pay royalties when due. Where lessees avail themselves of this privilege, division orders permitting the pipe line companies or other purchasers of the oil to withhold the royalty interest shall be executed and forwarded to the supervisor for approval, as pipe line companies are not permitted to accept or run oil from leased Indian lands until after the approval of a division order showing that the lessee has a lease regularly approved and in effect. When the lessee company runs its own oil, it shall execute an intracompany division order and forward it to the supervisor for his consideration. The right is reserved for the supervisor to cancel a division order at any time or require the pipe line company

to discontinue to run the oil of any lessee who fails to operate the lease properly or otherwise violates the provisions of the lease, of the regulations in this part, or of the operating regulations.

(b) When oil is taken by authority of a division order, the lessee or his representative shall be actually present when the oil is gauged and records are made of the temperature, gravity, and impurities. The lessee will be held responsible for the correctness and the correct recording and reporting of all of the foregoing measurements; which, except lowest gauge, shall be made at the time the oil is turned into the pipe line. Failure of the lessee to perform properly these duties will subject the division order to revocation.

CROSS REFERENCE: For oil and gas operating regulations of the Geological Survey, see 30 CFR Part 221.

§ 171.18 Inspection of premises, books and accounts.

Lessees shall agree to allow the lessors and their agents or any authorized representative of the Interior Department to enter, from time to time, upon and into all parts of the leased premises for the purpose of inspection, and shall further agree to keep a full and correct account of all operations and make reports thereof, as required by the regulations of the Department governing operations on public and restricted Indian lands; and their books and records, showing manner of operations and persons interested, shall be open at all times for examination of such officers of the Department as shall be instructed in writing by the Secretary of the Interior or authorized by regulations to make such examination.

§ 171.19 Diligence and prevention of waste.

The lessee shall exercise diligence in drilling and operating wells for oil and gas on the leased lands while such products can be secured in paying quantities; carry on all operations in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land, or the entrance of water through wells drilled by the lessee to the productive sands or oil or gas-bearing strata to the destruction or injury of the oil or gas deposits, the preservation and conservation of the property for future productive operations, and to the health and safety of workmen and employees; plug securely all wells before abandoning the same and to shut off effectually all water from the oil or gas-bearing strata; not drill any well within 200 feet of any house or barn on the premises without the lessor's written consent approved by the superintendent; carry out at his expense all reasonable orders and requirements of the supervisor relative to prevention of waste, and preservation of the property and the health and safety of workmen; bury all pipelines crossing tillable lands below plow depth unless other arrangements therefor are made with the superintendent; pay the lessor all damages to crops, buildings, and other improvements of the lessor occasioned by the lessee's operations: *Provided*, That the lessee shall not be held responsible for delays or casualties occasioned by causes beyond the lessee's control.

§ 171.20 Permission to start operations.

(a) No operations will be permitted on any lease before it it approved by the Secretary of the Interior.

(b) Written permission must be secured from the supervisor before any operations are started on the leased premises. After such permission is secured the operations must be in accordance with the operating regulations promulgated by the Secretary of the Interior. Copies of the regulations in this part may be secured from either the supervisor or the superintendent and no operations shall be attempted without a study of the operating regulations.

§ 171.21 Restrictions on operations.

(a) Oil and gas leases issued under the provisions of the regulations in this part shall be subject to imposition by the Secretary of the Interior of such restrictions as to time or times for the drilling of wells and as to the production from any well or wells as in his judgment may be necessary or proper for the protection of the natu-

ral resources of the leased land and in the interest of the lessor. In the exercise of his judgment the Secretary of the Interior may take into consideration, among other things, the Federal laws, State laws, regulations by competent Federal or State authorities, lawful agreements among operators regulating either drilling or production, or both, and any regulatory action desired by tribal authorities.

(b) All such leases shall be subject to any cooperative or unit development plan affecting the leased lands that may be required by the Secretary of the Interior, but no lease shall be included in any cooperative or unit plan without prior approval of the Secretary of the Interior and consent of the Indian tribe affected.

§ 171.22 Penalties.

Failure of the lessee to comply with any provisions of the lease, of the operating regulations, of the regulations in this part, order of the superintendent or his representative, or of the orders of the supervisor or his representative, shall subject the lease to cancellation by the Secretary of the Interior or the lessee to a penalty of not more than $500 per day for each and every day the terms of the lease, the regulations, or such orders are violated; or to both such penalty and cancellation: *Provided*, That the lessee shall be entitled to notice and hearing, within 30 days after such notice, with respect to the terms of the lease, regulations, or orders violated, which hearing shall be held by the supervisor, whose findings shall be conclusive unless an appeal be taken to the Secretary of the Interior within 30 days after notice of the supervisor's decision, and the decision of the Secretary of the Interior upon appeal shall be conclusive.

§ 171.23 Mines to be timbered properly.

In mining operations the lessee shall keep the mine well and sufficiently timbered at all points where necessary, in accordance with good mining practice, and in such manner as may be necessary to the proper preservation of the leased property and safety of the workmen.

§ 171.24 Surrender of leased premises in good condition.

On expiration of the term of a lease, or when a lease is surrendered, the lessee shall deliver to the Government the leased ground with the mine workings in good order and condition, and bondsmen will be held for such delivery in good order and condition, unless relieved by the Secretary of the Interior for cause. It shall, however, be stipulated that the machinery necessary to operate the mine is the property of the lessee, but that it may be removed by him only after the condition of the property has been ascertained by inspection by the Secretary of the Interior or his authorized agents, to be in satisfactory condition.

§ 171.25 Fees.

Unless otherwise authorized by the Secretary of the Interior or his authorized representative, each lease, mining permit, sublease, or assignment shall be accompanied at the time of filing by a fee of $10. Such fee will not be required on sand and gravel permits issued to States, counties, or other municipal bodies.

(Sec. 1, 41 Stat. 415, as amended: 25 U.S.C. 413)

[24 FR 7949, Oct. 2, 1959]

§ 171.26 Assignments and overriding royalties.

(a) Approved leases or any interest therein may be assigned or transferred only with the approval of the Secretary of the Interior, and to procure such approval the assignee must be qualified to hold such lease under existing rules and regulations and shall furnish a satisfactory bond conditioned for the faithful performance of the covenants and conditions thereof: *Provided*, That in order for such assignment to receive favorable consideration the lessee shall assign either his whole interest or an undivided interest in the whole lease.

(b) No lease or interest therein or the use of such lease shall be assigned, sublet, or transferred, directly or indirectly by working or drilling contract, or otherwise, without the consent of the Secretary of the Interior.

(c) Assignments of leases, and stipulations modifying the terms of existing leases, which stipulations are also subject to the approval of the Secretary of the Interior, shall be filed with the superintendent within 30 days after the date of execution.

(d) Agreements creating overriding royalties or payments out of production on oil and gas leases shall not be considered as interests in the leases as such term is used in this section. Agreements creating overriding royalties or payments out of production are hereby authorized and the approval of the Department of the Interior or any agency thereof shall not be required with respect thereto, but such agreements shall be subject to the condition that nothing in any such agreement shall be construed as modifying any of the obligations of the lessee, including, but not limited to, obligations for diligent development and operation, protection against drainage, compliance with oil and gas operating regulations (30 CFR Part 221), and the requirement for departmental approval before abandonment of any well. All such obligations are to remain in full force and effect, the same as if free of any such royalties or payments. The existence of agreements creating overriding royalties or payments out of production, whether or not actually paid, shall not be considered as justification for the approval of abandonment of any well. Nothing in this paragraph revokes the requirement for approval of assignments and other instruments which is required in this section, but any overriding royalties or payments out of production created by the terms of such assignments or instruments shall be subject to the condition stated above. Agreements creating overriding royalties or payments out of production need not be filed with the Superintendent unless incorporated in assignments or instruments required to be filed pursuant to this section.

[22 FR 10588, Dec. 24, 1957, as amended at 23 FR 9738, Dec. 18, 1958]

§ 171.27 Cancellation.

(a) When, in the opinion of the Secretary of the Interior, the lessee has violated any of the terms and conditions of a lease or of the applicable regulations, the Secretary of the Interior shall have the right at any time after 30 days' notice to the lessee specifying the terms and conditions violated, and after a hearing, if the lessee shall so request within 30 days after issuance of the notice, to declare such lease null and void, and the lessor shall then be entitled and authorized to take immediate possession of the land.

(b) On the following conditions, the lessee may, on approval of the Secretary of the Interior, surrender a lease or any part of it:

(1) That he make application for cancellation to the superintendent having jurisdiction over the land.

(2) That he pay a surrender fee of $1 at the time the application is made.

(3) That he pay all royalties and rentals due to the date of such application.

(4) That he make a satisfactory showing that full provision has been made for conservation and protection of the property and that all wells, drilled on the portion of the lease surrendered, have been properly abandoned.

(5) If the lease has been recorded, that he file, with his application, a recorded release of the acreage covered by the application.

(6) If the application is for the cancellation of the entire lease or the entire undivided portion, that he surrender the lease: *Provided*, That where the application is made by an assignee to whom no copy of the lease was delivered, he will be required to surrender only his copy of the assignment.

(7) If the lease (or portion being surrendered or canceled) is owned in undivided interests by more than one party, then all parties shall join in the application for cancellation.

(8) That all required fees and papers must be in the mail or received on or before the date upon which rents and royalties become due, in order for the lessee and his surety to be relieved from liability for the payment of such royalties and rentals.

(9) If there has been a contest respecting a lease or leases, the approved, the disapproved, or the can-

celed parts thereof will be held in the office of the superintendent for 5 days after the Department's decision has been promulgated, by mail or delivery, and will not be delivered, if within that period a motion for review and reconsideration be filed, until such motion is passed upon by the Department.

(10) In the event oil or gas is being drained from the leased premises by wells not covered by a lease; the lease, or any part of it, may be surrendered, only on such terms and conditions as the Secretary of the Interior may determine to be reasonable and equitable.

(c) No part of any advance rental shall be refunded to the lessee nor shall he be relieved, by reason of any subsequent surrender or cancellation of the lease, from the obligation to pay said advance rental when it becomes due.

§ 171.27a Prospecting permits.

With the consent of the tribal authorities the superintendent may issue permits to prospect for minerals other than oil and gas upon tribal lands. Such permits must describe the area to be prospected and definitely state the period of time within which such work is permitted. No ores shall be removed from the reservation under such permits, except samples for assay and experimental purposes. A prospecting permit will not give the permittee any preference right to a lease, unless specifically so stated in the permit, and all permits granting a preference right to a lease must comply with all the laws and regulations applicable to mineral leases on tribal Indian lands.

§ 171.28 Effective date of regulations.

The regulations in this part shall become effective and in full force from and after the date of approval, and shall be subject to change or alteration at any time by the Secretary of the Interior: *Provided*, That no regulations made after the approval of any lease shall operate to affect the term of the lease, rate of royalty, rental, or acreage unless agreed to by both parties to the lease. All former regulations governing the leasing of tribal lands for mining purposes are superseded by the regulations in this part.

§ 171.29 Exemption of leases made by organized tribes.

The regulations in this part may be superseded by the provisions of any tribal constitution, bylaw or charter issued pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461-479), the Alaska Act of May 1, 1936 (49 Stat. 1250; 48 U.S.C. 362, 258a), or the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C., and Sup., 501-509), or by ordinance, resolution or other action authorized under such constitution, bylaw or charter. The regulations in this part, in so far as they are not so superseded, shall apply to leases made by organized tribes if the validity of the lease depends upon the approval of the Secretary of the Interior.

§ 171.30 Forms.

Leases, assignments, and other instruments shall be on forms prescribed by the Secretary of the Interior or his authorized representative and may be obtained from the superintendent or other officer having jurisdiction over the lands.

[24 FR 7949, Oct. 2, 1959]

PART 172—LEASING OF ALLOTTED LANDS FOR MINING

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AUTHORITY: 35 Stat. 783, as amended; 25 U.S.C. 396, unless otherwise noted.

SOURCE: 22 FR 10592, Dec. 24, 1957, unless otherwise noted.

§ 172.1 Definitions.

(a) The term "superintendent" in this part refers to the superintendent or other officer of the Bureau of Indian Affairs or of the Government who may have jurisdiction over the allotments involved.

(b) The term "supervisor" in this part refers to a representative of the Secretary of the Interior, under direction of the Director of the United States Geological Survey, authorized and empowered to supervise and direct operations under oil and gas or other mining leases, to furnish scientific and technical information and advice, to ascertain and record the amount and value of production, and to determine and record rentals and royalties due and paid.

CROSS REFERENCE: For rules and regulations of the Geological Survey, see 30 CFR Chapter II.

§ 172.2 Applications.

Application for leases should be made to the superintendent having jurisdiction over the lands.

§ 172.3 No leases made to Government employees.

No lease, assignment thereof, or interest therein will be approved to any employee or employees of the United States Government whether connected with the Bureau or otherwise, and no employee of the Interior Department shall be permitted to acquire any interest in such leases by ownership of stock in corporations having leases or in any other manner.

(R.S. 2078; 25 U. S. C. 68)

§ 172.4 Sale of oil and gas leases.

(a) At such times and in such manner as he may deem appropriate, the superintendent shall publish notices at least thirty days prior to the sale, unless a shorter period is authorized by the Commissioner of Indian Affairs, that oil and gas leases on specific tracts, each of which shall be in a reasonably compact body, will be offered to the highest responsible bidder for a bonus consideration, in addition to stipulated rentals and royalties. Each bid must be accompanied by a cashier's check, certified check, or postal money order, payable to the payee designated in the invitation to bid, in an amount not less than 25 percent of the bonus bid. Within 30 days after notification of being the successful bidder, said bidder must remit the balance of the bonus, the first year's rental, and his share of the advertising costs, and shall file with the superintendent the lease in completed form. The superintendent may, for good and sufficient reasons, extend the time for the completion and submission of the lease form, but no extension shall be granted for remitting balance of monies due. If the successful bidder fails to pay the full consideration within said period, or fails to file the completed lease within said period or extension thereof, or if the lease is disapproved through no fault of the lessor or the Department of the Interior, 25 percent of the bonus bid will be

forfeited for the use and benefit of the Indian lessor.

(b) All notices or advertisements of sales of oil and gas leases shall reserve to the Secretary of the Interior the right to reject all bids when in his judgment the interests of the Indians will be best served by so doing, and that if no satisfactory bid is received, or if the accepted bidder fails to complete the lease, or if the Secretary of the Interior shall determine that it is unwise in the interests of the Indians to accept the highest bid, the Secretary may readvertise such lease for sale, or if deemed advisable, with the consent of the Indian owners, a lease may be made by private negotiations. The successful bidder or bidders will be required to pay his or their share of the advertising costs. Amounts received from unsuccessful bidders will be returned; but when no bid is accepted on a tract, the costs of advertising will be assessed against the applicant who requested that said tract be advertised.

§ 172.4a Leases for subsurface storage of oil or gas.

The provisions of § 171.3a of this subchapter are applicable to leases under this part.

[25 FR 9836, Oct. 14, 1960]

§ 172.5 Execution of leases by Superintendents.

The Superintendent shall execute leases on behalf of unknown owners of future contingent interests, and on behalf of minors and persons who are incompetent by reason of mental incapacity.

[24 FR 1568, Mar. 3, 1959]

§ 172.6 Leases for minerals other than oil and gas.

Leases for minerals other than oil and gas shall be advertised for bids as prescribed in § 172.4 unless the Commissioner grants to the Indian owners written permission to negotiate for a lease. Negotiated leases, accompanied by proper bond and other supporting papers, shall be filed with the Superintendent of the appropriate Indian Agency within 30 days after such permission shall have been granted by the Commissioner to negotiate the lease. The appropriate Area Director is authorized in proper cases to grant a reasonable extension of this period prior to its expiration. The right is reserved to the Secretary of the Interior to direct that negotiated leases be rejected and that they be advertised for bids. All leases shall be approved by the Secretary of the Interior or his duly authorized representative (35 Stat. 783; 25 U.S.C. 396).

§ 172.7 Requirements of corporate lessees.

If the applicant for lease is a corporation it shall file evidence of authority of its officers to execute papers, and with its first application it shall also file:

(a) A certified copy of its articles of incorporation, and, if foreign to the State in which the lands are located, evidence showing compliance with the corporation laws thereof.

(b) Lists of officers, principal stockholders, and directors, with post office addresses and number of shares held by each.

(c) A sworn statement of the proper officer showing:

(1) The total number of shares of the capital stock actually issued and the amount of cash paid into the treasury on each share sold; or, if paid in property, the kind, quantity, and value of the same paid per share.

(2) Of the stock sold, how much remains unpaid and subject to assessment.

(3) The amount of cash the company has in its treasury and elsewhere.

(4) The property, exclusive of cash, owned by the company and its value.

(5) The total indebtedness of the company and the nature of its obligations.

§ 172.8 Information; corporate lessees and stockholders.

Statements of changes in officers and stockholders shall be furnished by a corporation lessee to the superintendent on January 1 of each year, and at such other times as may be requested. Affidavits may also be required of individual stockholders at any time, setting forth in what corporations or with what persons, firms, or associations such individual stockhold-

ers are interested in mining leases of restricted Indian lands within the State, and whether they hold such interests for themselves or in trust.

§ 172.9 Leases of undivided inherited lands.

(a) If the allottee is deceased and the heirs to or devisees of any interest in the allotment have not been determined, or, if determined, some or all of them cannot be located, mining leases of such interests may be executed by the Superintendent, provided that such leases have been offered for sale to the highest responsible qualified bidder, at public auction, or on sealed bids, after at least 30 days' notice and advertisement unless a shorter period is authorized by the Commissioner of Indian Affairs.

(b) If the heirs include a life tenant, the lease must be accompanied by an agreement between such life tenant and the remaindermen, providing for the division of the rents and royalties subject to approval of the Commissioner of Indian Affairs or his authorized representative.

CROSS REFERENCE: For regulations relating to the establishment of heirship, see Part 15 of this chapter.

§ 172.10 Bonds.

The provisions of § 171.6 of this subchapter, or as hereafter amended, are applicable to leases under this part.

§ 172.11 Additional information.

The superintendent may, either before or after approval of a lease, call for any additional information desired to carry out the regulations in this part. If a lessee shall fail to furnish the papers necessary to put his lease and bond in proper form for consideration, the superintendent shall forward such lease for disapproval.

§ 172.12 Term of leases.

The provisions of § 171.10 of this subchapter, as amended, are applicable to leases under this part.

§ 172.13 Acreage limitation.

The provisions of § 171.9, of this subchapter, as amended, are applicable to leases under this part.

§ 172.14 Payment of rentals and royalties.

(a) Except as provided in paragraphs (b), (d) and (f) of this section, all rents, royalties and other payments due under leases which have been or may be approved in accordance with this part shall be paid by check or bank draft to the order of the Treasurer of the United States and transmitted through the supervisor to the Superintendent for deposit to the credit of the various lessors. When lessees and purchasers are instructed, in writing, by the Superintendent, which instructions shall be complete as to lessors for each lease, separate remittances for each payment due each lessor shall be made to the Superintendent. Any payments under this paragraph, covering lands or interests therein from which supervision by the Secretary of the Interior has been relinquished may continue to be made in the manner provided by this paragraph until ten days after notice of such relinquishment of supervision has been mailed to the lessee.

(b) The Superintendent may, in his discretion, whenever it appears to be in the best interest of any lessor, authorize and direct the lessee to pay directly to the lessor, the legal guardian of any lessor under guardianship, or to the parent of any minor, the rents, royalties and other payments due under leases which have been or may be approved in accordance with the regulations in this part. Any such authority for direct payment shall be in writing, addressed to the owner or owners of the lease, and shall expressly provide for its revocation or modification at any time, in writing, by the Superintendent, and shall either name a bank to receive deposit of such payments, or shall give the mailing address of each lessor. Written authorization for direct payment and written revocations or modifications thereof shall become a part of the lease and shall be distributed as in the case of original leases. All such revocations or modifications shall have a 5-day grace period after date of receipt. Rents, royalties, and other payments paid in accordance therewith shall constitute full compliance with the requirements of the lease pertaining to such payments.

(c) Rents and royalties paid pursuant to paragraphs (a) and (b) of this section on producing leases shall be supported by statements acceptable to the Secretary or his duly authorized representative, to be transmitted to the Supervisor, in duplicate, covering each lease, identified by contract number and lease number. Such statements shall show the specific items of rents or royalties for which remittances are made, shall identify each remittance by the remittance number, date, amount, and name of each payee, shall show the total amount of royalties or rental paid, and shall be supported by a copy of the purchaser's settlement or pipeline statement for each lease under which royalties are paid.

(d) Rents paid on nonproducing leases pursuant to paragraphs (a) and (b) of this section shall be supported by a statement, acceptable to the Superintendent, to be transmitted to the Superintendent covering each lease, identified by contract number and lease number. Each remittance shall be identified by the remittance number, date, amount, name of each payee, and dates of mailing or remittances. Date of mailing, or, if remittance is sent by registered mail, the date of registration receipts covering remittances mailed, shall be considered as date of payment.

(e) In the event of the discovery of minerals in paying quantities all advance payments shall be allowed as credit on stipulated royalties for the year for which the payment is made. No refund will be made under oil, gas, or other mining leases, in the event the royalty on production for any year is not sufficient to equal the advance payment for that year, nor will any part of the moneys so paid be refunded to the lessee because of any subsequent surrender or cancellation of the lease, nor shall the lessee be relieved from the obligations to pay said advance rental annually when it becomes due by reason of any subsequent surrender or cancellation of the lease.

(f) For leases other than oil and gas, all advance rental for the first year shall be paid to the Superintendent at the time of filing the lease, and the amounts so paid shall be and become the property of the lessor if the lease be disapproved because of the lessee's failure to meet the requirements of the law or the regulations in this part, or because of any other fault or defect chargeable to the lessee.

§ 172.15 Annual rentals and expenditures for development on leases other than oil and gas.

The provisions of § 171.14 of this subchapter, as amended, are applicable to leases other than oil and gas under this part.

(Secs. 16, 17, 48 Stat. 987, 988, sec. 9, 49 Stat. 1968, sec. 4, 52 Stat. 348; 25 U.S.C. 396d, 476, 477, 509)

§ 172.15a Suspension of operations and production on leases for minerals other than oil and gas.

The Secretary of the Interior or his authorized representative may authorize suspension of operating and producing requirements on mining leases for minerals other than oil and gas whenever it is considered that marketing facilities are inadequate or economic conditions unsatisfactory. Applications be lessees for relief from all operating and producing requirements on such mineral leases shall be filed in triplicate in the office of the Regional Mining Supervisor of the Geological Survey and a copy thereof filed with the Superintendent. Complete information must be furnished showing the necessity for such relief. Suspension of operations and production shall not relieve the lessee from the obligations of continued payment of the annual rental or the minimum royalty.

[24 FR 9511, Nov. 26, 1959]

§ 172.16 Rentals and royalties for oil and gas leases.

The lessee shall pay, beginning with the date of approval of oil and gas leases by the Secretary of the Interior, a rental of $1.25 per acre per annum in advance during the continuance thereof, the rental so paid for any one year to be credited on the royalty for that year, together with a royalty of 12½ percent of the value or amount of all oil, gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and saved from the land

leased save and except oil, and/or gas used by the lessee for development and operation purposes on the lease, which oil or gas shall be royalty free. A higher rate of royalty may be fixed by the Secretary of the Interior or his authorized representative, prior to the advertisement of land for oil and gas leases. During the period of supervision, "value" for the purposes of the lease may, in the discretion of the Secretary, be calculated on the basis of the highest price paid or offered (whether calculated on the basis of short or actual volume) at the time of production for the major portion of the oil of the same gravity, and gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and sold from the field where the leased lands are situated, and the actual volume of the marketable product less the content of foreign substances as determined by the oil and gas supervisor. The actual amount realized by the lessee from the sale of said products may, in the discretion of the Secretary of the Interior, be deemed mere evidence of or conclusive evidence of such value. When paid in value, such royalties shall be due and payable monthly on the last day of the calendar month following the calendar month in which produced; when royalty on oil produced is paid in kind, such royalty oil shall be delivered in tanks provided by the lessee on the premises where produced without cost to the lessor unless otherwise agreed to by the parties thereto, at such time as may be required by the lessor. The lessee shall not be required to hold such royalty oil in storage longer than 30 days after the end of the calendar month in which said oil is produced. The lessee shall be in no manner responsible or held liable for loss or destruction of such oil in storage caused by acts of God. All rental and royalty payments, except as provided in sections 4(c) and 8(a) of the lease (Form 5–154h, revised April 24, 1935), shall be made by check or draft drawn on a solvent bank, open for the transaction of business on the day the check or draft is issued, to the order of the Superintendent. Except the advance rental for the first year, which, as provided in § 172.14 shall be paid to the superintendent when the lease is filed, payments shall be transmitted through the oil and gas supervisor, shall be accompanied by a statement by the lessee, in triplicate, showing the specific items of rental or royalty that the remittance is intended to cover, and shall be made at such times as the lease provides. In determining the value for royalty purposes of products, such as natural gasoline, that are derived from treatment of gas, a reasonable allowance for the cost of manufacture shall be made, such allowance to be two-thirds of the value of the marketable product unless otherwise determined by the Secretary of the Interior on application of the lessee or on his own initiative, and that royalty will be computed on the value of gas or casing-head gas, or on the products thereof (such as residue gas, natural gasoline, propane, butane, etc.), whichever is the greater.

§ 172.17 Preference of Government to purchase oil.

In time of war or other public emergency any of the executive departments of the United States Government shall have the option to purchase at the highest posted market price on the date of sale all or any part of the oil produced under any lease.

§ 172.18 Royalty rates for minerals other than oil and gas.

Unless otherwise authorized by the Commissioner of Indian Affairs, the minimum rates for minerals other than oil and gas shall be as follows:

(a) For substances other than gold, silver, copper, lead, zinc, tungsten, coal, asphaltum and allied substances, oil, and gas, the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 percent of the value, at the nearest shipping point, of all ores, metals, or minerals marketed.

(b) For gold and silver the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 percent to be computed on the value of bullion as shown by mint returns after deducting forwarding charges to the point of sale; and for copper, lead, zinc, and tungsten, a

royalty of not less than 10 percent to be computed on the value of ores and concentrates as shown by reduction returns after deducting freight charges to the point of sale. Duplicate returns shall be filed by the lessee with the Superintendent within 10 days after the ending of the quarter or other period specified in the lease within which such returns are made: *Provided, however,* That the lessee shall pay a royalty of not less than 10 percent of the value of the ore or concentrates sold at the mine unless otherwise provided in the lease.

(c) For coal the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 cents per ton of 2,000 pounds of mine run, or coal as taken from the mine, including what is commonly called "slack."

(d) For asphaltum and allied substances the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 cents per ton of 2,000 pounds on crude material or not less than 60 cents per ton on refined substances.

§ 172.19 Payment of royalties by purchasers of oil; division orders.

(a) Lessees may make arrangement with the purchasers of oil for the payment of the royalties to the superintendent of such purchasers, but such arrangement, if made, shall not operate to relieve a lessee from responsibility should the purchaser fail or refuse to pay royalties when due. Where lessees avail themselves of this privilege, division orders permitting the pipe line companies or other purchasers of the oil to withhold the royalty interest shall be executed and forwarded to the oil and gas supervisor for approval, as pipe line companies are not permitted to accept or run oil from leased Indian lands until after the approval of a division order showing that the lessee has a lease regularly approved and in effect. The right is reserved for the oil and gas supervisor to cancel a division order at any time or require the pipe line company to discontinue to run the oil of any lessee who fails to operate the lease property or otherwise violates the provisions of the lease, of the regulations in this part, or of the operating regulations.

(b) Lessee or his representative shall actually be present when oil taken under division orders is run by pipe line companies and lessee shall be responsible for the correct measurement and report of oil so run; otherwise the approval of division order may be revoked.

CROSS REFERENCE: For oil and gas operating regulations of the Geological Survey, see 30 CFR Part 221.

§ 172.20 Time of royalty payments.

Royalty payments on all leases shall be made monthly, on or before the last day of the calendar month following the calendar month for which such payment is to be made.

§ 172.21 Stipulations.

The lessee under any lease heretofore approved may, by stipulation (Form 5–154i), with the consent of the lessor and the approval of the Secretary of the Interior make such approved lease subject to all the terms, conditions, and provisions contained in the regulations in this part and in the lease form currently in use.

§ 172.22 Assignments and overriding royalties.

(a) Leases hereafter approved, or any interest therein, may be assigned or transferred only with the approval of the Secretary of the Interior, and to procure such approval the assignee must be qualified to hold such lease under existing rules and regulations, and shall furnish a satisfactory bond for the faithful performance of the covenants and conditions thereof.

(b) No lease or any interest therein or the use of such lease shall be assigned, sublet, or transferred, directly or indirectly, by working or drilling contract, or otherwise, without the consent of the Secretary of the Interior.

(c) Assignments of leases and stipulations modifying the terms of existing leases shall be filed with the superintendent within 30 days after the date of execution.

(d) An agreement creating overriding royalties or payments out of production on oil and gas leases under

this part shall be subject to the provisions of § 171.26(d) of this subchapter, or as hereafter amended.

[22 FR 10592, Dec. 24, 1957, as amended at 23 FR 9758, Dec. 18, 1958]

§ 172.23 Cancellations.

(a) A lease will be cancelled by the Secretary of the Interior for good cause upon application of the lessor or lessee, or if at any time the Secretary is satisfied that the provisions of the lease or of any regulations heretofore or hereafter prescribed have been violated. When the lessee applies for cancellation he must, before the same will be considered, pay a surrender fee of $1 and all royalties and rents due to the date of completion of such application, surrender all parts of the lease actually delivered to him, and furnish a duly recorded release of the acreage covered by the application if the lease thereon has been recorded: *Provided*, That where the application is made by an assignee to whom no copy of the lease was delivered he will be required to surrender only his copy of the assignment.

(b) If the lease is owned in undivided interests by more than one person, firm, or corporation all shall join in the application for cancellation.

(c) All required fees and papers must be at least in the mail on or before the date upon which rents and royalties become due in order for the lessee and his surety to be relieved from liability for the payment thereof.

(d) If there has been a contest respecting a lease or leases, the approved, disapproved or canceled parts thereof will be held in the office of the superintendent for 5 days after promulgation by him, by mailing or delivery of the department's decision, and will not be delivered if within that period a motion for review or reconsideration be filed until such motion is passed upon by the department.

(e) No part of any advance rentals shall be refunded to the lessee, nor shall he be relieved from his obligation to pay rentals annually when due by reason of any subsequent surrender or cancellation of the lease. Upon cancellation of a lease the lessor shall be entitled to take immediate possession of the land.

§ 172.24 Operation and development regulations.

(a) Lessees will be required to carry out and observe the operating regulations now or hereafter in force governing oil and gas operations on restricted Indian lands. Operations will not be permitted under any lease requiring approval of the Secretary of the Interior until the approved lease has been delivered.

(b) All leases issued under the provisions of the regulations in this part shall be subject to imposition by the Secretary of such restrictions as to time or times for the drilling of wells and as to the production from any well or wells as in his judgment may be necessary or proper for the protection of the natural resources of the leased land and in the interests of the Indian lessor. In the exercise of his judgment the Secretary may take into consideration among other things the Federal laws, State laws or regulations by competent Federal or State authorities or lawful agreements among operators regulating either drilling or production or both, and also any regulatory action desired by tribal authorities.

(c) All leases issued pursuant to the regulations in this part shall be subject to a co-operative or unit development plan affecting the leased lands if and when required by the Secretary of the Interior.

§ 172.25 Inspection of books and accounts.

Lessees shall agree to allow the lessors and their agents or any authorized representative of the Interior Department to enter, from time to time, upon and into all parts of the leased premises for the purposes of inspection, and shall further agree to keep a full and correct account of all operations and make reports thereof, as required by the regulations of the Department governing operations on public and restricted Indian lands; and their books and records showing manner of operations and persons interested shall be open at all times for examination of such officers of the department as shall be instructed in writing by the Secretary of the Interior or authorized by regulations to make such examinations.

§ 172.26 Leases on unrestricted lands.

All leases of any description whatever executed by an allottee on land from all of which the restrictions against alienation had been removed before such execution may be executed without any provision for reference to or supervision by the Secretary of the Interior or any official of the Department of the Interior; and the superintendent shall refuse to accept for consideration any lease covering land from all of which restrictions had been removed before such execution.

§ 172.27 Leases executed before removal of restrictions.

All leases executed before the removal of restrictions against alienation on land from all of which restrictions against alienation shall be removed after such execution, if such leases contain specific provision or approval by the Secretary of the Interior, whether now filed with the Department of the Interior or presented for consideration hereafter, will be considered and acted upon by the Department as heretofore.

§ 172.28 Removal of restrictions.

(a) Oil and gas leases heretofore or hereafter approved and leases for other minerals now or hereafter in force on land from all of which restrictions against alienation have been or shall be removed, even if such leases contain provisions authorizing supervision by the Department, shall, after such removal of restrictions against alienation, be operated entirely free from such supervision, and the authority and power delegated to the Secretary of the Interior in said leases shall cease, and all payments required to be made to the superintendent shall thereafter be made to lessor or the then owner of said land; and changes in regulations thereafter made by the Secretary of the Interior applicable to oil and gas leases shall not apply to such leased land from which said restrictions are removed.

(b) In the event restrictions are removed from a part of the land included in any lease to which this section applies the entire lease shall continue subject to the supervision of the Secretary of the Interior, and all royalties thereunder shall be paid to the superintendent until such time as the lessor and lessee shall furnish the Secretary of the Interior satisfactory information that adequate arrangements have been made to account for the oil, gas, or mineral upon the restricted land, separately from that upon the unrestricted. Thereafter the restricted land only shall be subject to the supervision of the Secretary of the Interior: *Provided*, That the unrestricted portion shall be relieved from such supervision as in the lease or regulations provided.

§ 172.29 Terms applying after relinquishment.

Sections 8 and 9 of the approved oil and gas lease (Form 5-154h, as revised Apr. 24, 1935), relative to relinquishment of supervision and terms operative after such relinquishment, read as follows:

8. Relinquishment of supervision by the Secretary of the Interior. Should the Secretary of the Interior, at any time during the life of this instrument, relinquish supervision as to all or part of the acreage covered hereby, such relinquishment shall not bind lessee until said Secretary shall have given 30 days' written notice. Until said requirements are fulfilled, lessee shall continue to make all payments due hereunder as heretofore in section 3(c). After notice of relinquishment has been received by lessee, as herein provided, this lease shall be subject to the following further conditions:

(a) All rentals and royalties thereafter accruing shall be paid in the following manner: Rentals and royalties shall be paid to lessor or his successors in title, or to a trustee appointed under the provisions of section 9 hereof. Rentals and royalties shall be paid directly to lessor or his successors in title, or to said trustee as the case may be.

(b) If, at the time supervision is relinquished by the Secretary of the Interior, lessee shall have made all payments then due hereunder, and shall have fully performed all obligations on its part to be performed up to the time of such relinquishment, then the bond given to secure the performance hereof, on file in the Indian Office, shall be of not further force or effect.

(c) Should such relinquishment affect only part of the acreage, then lessee may continue to drill and operate the land covered hereby as an entirety: *Provided*, That the lessee shall pay in the manner prescribed by section 3(c), for the benefit of lessor such proportion of all rentals and

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royalties due hereunder as the acreage retained under the supervision of the Secretary of the Interior bears to the entire acreage of the lease, the remainder of such rentals and royalties to be paid directly to lessor or his successors in title or said trustee as the case may be, as provided in subdivision (a) of this section.

9. Division of fee. It is covenanted and agreed that should the fee of said land be divided into separate parcels, held by different owners, or should the rental or royalty interest hereunder be so divided in ownership, after the execution of this lease and after the Secretary of the Interior relinquishes supervision hereof, the obligations of lessee hereunder shall not be added to or changed in any manner whatsoever save as specifically provided by the terms of this lease. Notwithstanding such separate ownership, lessee may continue to drill and operate said premises as an entirety: *Provided*, That each separate owner shall receive such proportion of all rentals and royalties accruing after the vesting of his title as the acreage of the fee, or rental or royalty interest, bears to the entire acreage covered by the lease; or to the entire rental and royalty interest as the case may be: *Provided further*, That if, at any time after departmental supervision hereof is relinquished, in whole or in part, there shall be four or more parties entitled to rentals or royalties hereunder, whether said parties are so entitled by virtue of undivided interests or by virtue of ownership hereby, of separate parcels of the land covered lessee at his election may withhold the payment of further rentals or royalties (except as to the portion due the Indian lessor while under restriction), until all of said parties shall agree upon and designate in writing and in a recordable instrument a trustee to receive all payments due hereunder on behalf of said parties and their respective successors in title. Payments to said trustee shall constitute lawful payments hereunder, and the sole risk of an improper or unlawful distribution of said funds by said trustee shall rest upon the parties naming said trustee and their respective successors in title.

These, or similar provisions, will be contained in all leases.

§ 172.30 Removal of restrictions upon part of acreage.

Should the removal of restrictions affect only part of the acreage covered by an oil and gas lease containing provisions to the effect that the royalties accruing under the lease, where the fee is divided into separate parcels, shall be paid to each owner in the proportion which his acreage bears to the entire acreage covered by the lease, the lessee or assignee of such unrestricted portion will be required to make the reports required by the regulations in this part and the operating regulations with respect to the beginning of drilling operations, completion of wells, and production, the same as if the restrictions had not been removed. In the event the unrestricted portion of the leased premises is producing, the owners of the lease thereon will be required to pay the portion of the royalties due the Indian lessor at the time and in the manner specified by the regulations in this part.

§ 172.31 Fees.

The provisions of § 171.25 of this chapter, or as hereafter amended, are applicable to this part.

[24 FR 7974, Oct. 2, 1959]

§ 172.32 Forms.

The provisions of § 171.30 of this chapter, or as hereafter amended, are applicable to this part.

[24 FR 7974, Oct. 2, 1959]

§ 172.33 Individual tribal assignments excluded.

The reference in this part to "allottees" and "allotments" does not include assignments of tribal lands made pursuant to tribal constitutions for the use of individual Indians and assignees of such lands; but such tribal assignments may be leased by Indians to whom mineral rights have been so assigned, subject to the terms of the tribal constitution and subject to the approval of the Secretary of the Interior for such periods of time as are authorized by existing law. In the leasing of such lands preference will be given to Indian cooperative associations and to individual Indians.

(Secs. 16, 17, 48 Stat. 987, 988; 25 U.S.C. 476, 477)

PART 173—LEASING OF LANDS IN CROW INDIAN RESERVATION, MONT., FOR MINING

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AUTHORITY: Sec. 6, 41 Stat. 753, sec. 6, 44 Stat. 659, unless otherwise noted.

SOURCE: 22 FR 10596, Dec. 24, 1957, unless otherwise noted.

CROSS REFERENCE: For regulations governing mining leases on tribal lands, Spokane Reservation, see Part 171 of this chapter.

§ 173.1 Definitions.

(a) The term "superintendent" in this part refers to the superintendent or other officer of the Bureau of Indian Affairs or of the Government who may have jurisdiction over the Crow Reservation.

(b) The term "supervisor" in this part refers to a representative of the Secretary of the Interior, under direction of the Director of the United States Geological Survey, authorized and empowered to supervise and direct operations under oil and gas or other mining leases, to furnish scientific and technical information and advice, to ascertain and record the amount and value of production, and to determine and record rentals and royalties due and paid.

CROSS REFERENCE: For rules and regulations of the Geological Survey, see 30 CFR Chapter II.

§ 173.2 Employee restrictions.

No lease, assignment thereof, or interest therein will be approved to any employee or employees of the United States Government whether connected with the Bureau or otherwise, and no employee of the Interior Department shall be permitted to acquire any interest in such leases by ownership of stock in corporations having leases or in any other manner.

(R.S. 2078; 25 U.S.C. 68)

§ 173.3 Requests for sales.

No oil and gas lease on the Crow Reservation will be offered until the Crow tribal council shall have passed a resolution requesting the Secretary of the Interior to lease the land for mining purposes. Should any person, firm, or corporation desire to have any particular tract of land offered for lease, written request to that effect should be submitted to the superintendent in order that such tract may, if deemed advisable, upon the request of the Crow tribal council, be included in the next advertisement of leases.

§ 173.4 Lease sales.

(a) At such times and in such manner as he may deem appropriate, the superintendent shall publish notices at least thirty days prior to the sale, unless a shorter period is authorized by the Commissioner of Indian Affairs, that mineral leases on specific tracts, each of which shall be in a reasonably compact body, will be offered to the highest responsible bidder for a bonus consideration, in addition to stipulated rentals and royalties. Each bid must be accompanied by a cashier's check, certified check, or postal money order, payable to the payee designated in the invitation to bid, in an amount not less than 25 percent of the bonus bid. Within 30 days after notification of being the successful bidder, said bidder must remit the balance of the bonus, the first year's rental, and his share of the advertising

costs, and shall file with the superintendent the lease in completed form. The superintendent may, for good and sufficient reasons, extend the time for the completion and submission of the lease form, but no extension shall be granted for remitting the balance of monies due. If the successful bidder fails to pay the full consideration within said period, or fails to file the completed lease within said period or extension thereof, or if the lease is disapproved through no fault of the lessor or the Department of the Interior, 25 percent of the bonus bid will be forfeited for the use and benefit of the Indian's lessor.

(b) All notices or advertisements of sales of mineral leases shall reserve to the Secretary of the Interior the right to reject all bids when in his judgment the interests of the Indians will be best served by so doing, and that if no satisfactory bid is received, or if the accepted bidder fails to complete the lease, or if the Secretary of the Interior shall determine that it is unwise in the interests of the Indians to accept the highest bid, the Secretary may readvertise such lease for sale, or if deemed advisable, with the consent of the tribal council or other governing tribal authorities, a lease may be made by private negotiations. The successful bidder or bidders will be required to pay his or their share of the advertising costs. Amounts received from unsuccessful bidders will be returned; but when no bid is accepted on a tract, the costs of advertising will be assessed against the applicant who requested that said tract be advertised.

§ 173.5 Requirements of corporations.

If the applicant for a lease is a corporation, it shall file evidence of authority of its officers to execute papers; and with its first application it shall also file a certified copy of its articles of incorporation, and, if foreign to the State in which the lands are located, evidence showing compliance with the corporation laws thereof. The superintendent may at his discretion require a corporation applicant or lessee to file:

(a) Lists of officers, principal stockholders, and directors, with post office addresses and number of shares held by each.

(b) A sworn statement of the proper officer showing:

(1) The total number of shares of the capital stock actually issued and the amount of cash paid into the treasury on each share sold; or, if paid in property, the kind, quantity, and value of the same paid per share.

(2) Of the stock sold, how much remains unpaid and subject to assessment.

(3) The amount of cash the company has in its treasury and elsewhere.

(4) The property, exclusive of cash, owned by the company and its value.

(5) The total indebtedness of the company and the nature of its obligations.

(6) Whether the applicant or any person controlling, controlled by or under common control with the applicant has filed any registration statement, application for registration, prospectus or offering sheet with the Securities and Exchange Commission pursuant to the Securities Act of 1933 or the Securities Exchange Act of 1934 or said Commission's rules and regulations under said acts; if so, under what provision of said acts or rules and regulations; and what disposition of any such statement, application, prospectus or offering sheet has been made.

(c) Statements of changes in officers and stockholders.

(d) Affidavits of individual stockholders, setting forth in what corporations or with what persons, firms, or associations such individual stockholders are interested in mining leases on restricted lands within the State, and whether they hold such interests for themselves or in trust.

CROSS REFERENCE: For rules and regulations of the Securities and Exchange Commission, see 17 CFR Chapter II.

§ 173.6 Requirements of unincorporated applicants.

Unincorporated applicants shall file such information relative to financial standing and ability to proceed with the development of a lease as the Department of the Interior, through the superintendent of the Crow Indian Agency, may require.

§ 173.7 Bonds.

The provisions of § 171.6 of this subchapter, or as hereafter amended, are applicable to leases under this part.

§ 173.8 Additional information.

The superintendent may, either before or after approval of a lease, call for any information necessary to carry out the regulations in this part; failure of the lessee to furnish such information or to furnish the papers to put his lease and bond in proper form, will be deemed sufficient reason for disapproval or cancellation, whichever is appropriate, of the lease.

§ 173.9 Renewals.

Leases shall be made for a period not longer than ten years, but lessees may have the right of renewal thereof for a further period of 10 years upon such terms and conditions as the Secretary of the Interior may prescribe and agreed to by the tribal council. Applications for renewals of leases shall be made not later than 60 days prior to the date of expiration of the original lease.

§ 173.10 Lease acreage.

The provisions of § 171.9 of this subchapter, or as hereafter amended, are applicable to leases under this part.

§ 173.11 Wells.

The lessee shall agree (a) to drill and produce all wells necessary to offset or protect the leased land from drainage by wells on adjoining lands not the property of the lessor, or in lieu thereof, compensate the lessor in full each month for the estimated loss of royalty through drainage: *Provided*, That during the period of supervision by the Secretary of the Interior, the necessity for offset wells shall be determined by the oil and gas supervisor and payment in lieu of drilling and producing shall be with the consent of, and in an amount determined by the Secretary of the Interior; (b) at the election of the lessee to drill and produce other wells: *Provided*, That the right to drill and produce such other wells shall be subject to any system of well spacing or production allotments authorized and approved under applicable law or regulations, approved by the Secretary of the Interior and affecting the field or area in which the leased lands are situated; and (c) if the lessee elects not to drill and produce such other wells for any period the Secretary of the Interior may, within 10 days after due notice in writing, either require the drilling and production of such wells to the number necessary, in his opinion, to insure reasonable diligence in the development and operations of the property, or may in lieu of such additional diligent drilling and production require the payment on and after the first anniversary date of this lease of not to exceed $1 per acre per annum, which sum shall be in addition to any rental or royalty hereinafter specified: *Provided*, That in the event oil or gas is discovered on the leased premises, the lessee shall proceed with all reasonable diligence to develop said premises and extract the oil or gas therefrom and bring same into the market as speedily as possible, unless the extraction and sale thereof be withheld with the consent of the Crow Indian tribal council.

CROSS REFERENCE: For oil and gas operating regulations of the Geological Survey, see 30 CFR Part 221.

§ 173.12 Diligence and prevention of waste.

The lessee shall exercise reasonable diligence in drilling and operating wells for oil and gas on the lands covered hereby, while such products can be secured in paying quantities; carry on all operations hereunder in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land, or the entrance of water through wells drilled by the lessee to the productive sands or oil or gas-bearing strata to the destruction or injury of the oil or gas deposits, the preservation and conservation of the property for future productive operations, and to the health and safety of workmen and employees; plug securely all wells before abandoning the same and to shut off effectually all water from the oil or gas-bearing strata; not drill any well within 200 feet of any house or

barn on the premises without the lessor's written consent approved by the superintendent; carry out at his expense all reasonable orders and requirements of the oil and gas supervisor relative to prevention of waste, and preservation of the property and the health and safety of workmen; bury all pipe lines crossing tillable lands below plow depth unless other arrangements therefor are made with the superintendent; pay the lessor all damages to crops, buildings, and other improvements of the lessor occasioned by the lessee's operations: *Provided*, That the lessee shall not be held responsible for delays or casualties occasioned by causes beyond the lessee's control.

§ 173.13 Payments.

(a) All payments due the lessor shall be made to the superintendent, for the benefit of the lessors, and no credit will be given any lessee for payments made otherwise. Payments of rentals and royalties under oil and gas leases, except the first year's rental which shall be paid to the superintendent as prescribed in § 173.4 shall be transmitted to the superintendent through the oil and gas supervisor. All such payments shall be accompanied by a statement, in triplicate, by the lessee, showing the specific items of royalty or rental that the remittance is intended to cover, and shall be made at such time or times as the lease provides.

(b) In the event of the discovery of minerals in paying quantities, all advance rental and royalty payments will be allowed as credit on stipulated royalties for the year for which the payment is made. In the event the royalty on production for any year is not sufficient to equal the advance rental and royalties for that year, no refund will be made; nor will any part of the moneys so paid be refunded because of any subsequent surrender or cancellation of the lease, nor shall the lessee be relieved, by reason of any subsequent surrender or cancellation of the lease, from the obligation to pay said advance rental and royalty.

[22 FR 10596, Dec. 24, 1957, as amended at 24 FR 6342, Aug. 7, 1959]

§ 173.14 Royalty rates; oil and gas leases.

The lessee shall pay, beginning with the date of approval of oil and gas leases by the Secretary of the Interior, a rental of $1.25 per acre per annum in advance during the continuance thereof, together with a royalty of 12½ percent of the value or amount of all oil, gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and saved from the land leased, save and except oil, and/or gas used by the lessee for development and operation purposes on the lease, which oil and/or gas shall be royalty free. A higher rate of royalty may be fixed by the Secretary of the Interior or his authorized representative, prior to the advertisement of land for oil and gas leases.

§ 173.15 Gas for use of lessor.

If the leased premises produce gas in excess of the lessee's requirements for the development and operation of said premises the lessor may use sufficient gas, free of charge, for any desired school or other building belonging to the tribe, by making his own connections to a regulator installed, connected to the well and maintained by the lessee, and the lessee shall not be required to pay royalty on gas so used. The use of such gas shall be at the lessor's risk at all times.

§ 173.16 Annual rentals and expenditures for development on mining leases other than oil and gas.

The provisions of § 171.14 of this subchapter, or as hereafter amended, are applicable to leases under this part.

[24 FR 6342, Aug. 7, 1959]

§ 173.16a Suspension of operations and production on leases for minerals other than oil and gas.

The provisions of § 171.14a of this subchapter are applicable to leases under this part.

[24 FR 9511, Nov. 26, 1959]

§ 173.17 Royalty rates for minerals other than oil and gas.

Unless otherwise authorized by the Commissioner of Indian Affairs, the

minimum rates for minerals other than oil and gas shall be as follows:

(a) For substances other than gold, silver, copper, lead, zinc, tungsten, coal, asphaltum and allied substances, oil, and gas, the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 percent of the value, at the nearest shipping point, of all ores, metals, or minerals marketed.

(b) For gold and silver the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 percent to be computed on the value of bullion as shown by mint returns after deducting forwarding charges to the point of sale; and for copper, lead, zinc, and tungsten, a royalty of not less than 10 percent to be computed on the value of ores and concentrates as shown by reduction returns after deducting freight charges to the point of sale. Duplicate returns shall be filed by the lessee with the Superintendent within 10 days after the ending of the quarter or other period specified in the lease within which such returns are made: *Provided, however,* That the lessee shall pay a royalty of not less than 10 percent of the value of the ore or concentrates sold at the mine unless otherwise provided in the lease.

(c) For coal the lessee shall pay quarterly or as otherwise provided in the lease a royalty of not less than 10 cents per ton of 2,000 pounds of mine run, or coal as taken from the mine, including what is commonly called "slack."

(d) For asphaltum and allied substances the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 cents per ton of 2,000 pounds on crude material or not less than 60 cents per ton on refined substances.

§ 173.18 Books of sales and receipts open to inspection.

The lessee shall keep books of account showing the amount of ore shipped or oil or other mineral substance sold or treated, and showing also the amount of money received from the sale of ores, oil, etc. The books of the lessee shall be open to inspection, examination, and verification by any officer of the Interior Department assigned to such duty by the Secretary of the Interior and it is distinctly understood that the duly authorized agents of the Government shall be permitted freely to make transcripts of all the accounts and other books of lessee.

§ 173.19 Manner of paying royalties.

All royalties or payments due under leases under the regulations in this part shall be made by check or draft drawn on a solvent bank, open for the transaction of business on the day the check or draft is issued, or by other form of suitable exchange, to the order of the superintendent. All such payments except advance rentals for the first year, which, as provided in the regulations in this part, are to be paid to the superintendent at the time the leases are filed, shall be transmitted through the oil and gas supervisor, shall be accompanied by a statement by the lessee, in triplicate, showing the specific terms of rentals or royalty that the remittance is intended to cover and shall be made at such times as the lease provides.

§ 173.20 Division orders.

(a) Lessees may make arrangements with the purchasers of oil for the payment of the royalties to the superintendent by such purchasers, but such arrangement, if made, shall not operate to relieve a lessee from responsibility should the purchaser fail or refuse to pay royalties when due. Where lessees avail themselves of this privilege, division orders permitting the pipe line companies or other purchasers of the oil to withhold the royalty interest shall be executed and forwarded to the oil and gas supervisor for approval, as pipe line companies are not permitted to accept or run oil from leased Indian lands until after the approval of a division order showing that the lessee has a lease regularly approved and in effect. When the lessee company runs its own oil, it shall execute an intracompany division order and forward it to the oil and gas supervisor for his consideration. The right is reserved for the oil and gas supervisor to cancel a division order at any time or require the pipe line company to dis-

continue to run the oil of any lessee who fails to operate the lease properly or otherwise violates the provisions of the lease, of the regulations in this part, or of the operating regulations.

(b) When oil is taken by authority of a division order, the lessee or his representative shall be actually present when the oil is gauged and records are made of the temperature, gravity, and impurities. The lessee will be held responsible for the correctness and the correct recording and reporting of all of the foregoing measurements; which, except lowest guage, shall be made at the time the oil is turned into the pipe line. Failure of the lessee to perform properly these duties will subject the division order to revocation.

CROSS REFERENCE: For oil and gas operating regulations of the Geological Survey, see 30 CFR Part 221.

§ 173.21 Assignments and overriding royalties.

(a) Leases hereafter approved, or any interest therein, may be assigned or transferred only with the approval of the Secretary of the Interior, and to procure such approval the assignee must be qualified to hold such lease under existing rules and regulations, and shall furnish a satisfactory bond for the faithful performance of the covenants and conditions thereof.

(b) No lease or any interest therein or the use of such lease shall be sublet or transferred, directly or indirectly, by working or drilling contract or otherwise, without the consent of the Secretary of the Interior.

(c) Assignments of leases and stipulations modifying the terms of existing leases, which stipulations also require the approval of the Secretary of the Interior, shall be filed with the superintendent within 30 days after the date of execution.

(d) An agreement creating overriding royalties or payments out of production on oil and gas leases under this part shall be subject to the provisions of § 171.26(d) of this subchapter, or as hereafter amended.

[22 FR 10596, Dec. 24, 1957, as amended at 23 FR 9758, Dec. 18, 1958]

§ 173.22 Cancellation.

When, before restrictions are removed, in the opinion of the Secretary of the Interior, the lessee has violated any of the terms and conditions of a lease or of the applicable regulations, the Secretary of the Interior shall have the right at any time after 30 days' notice to the lessee specifying the terms and conditions violated, and after a hearing, if the lessee shall so request within 30 days after issuance of the notice, to declare such lease null and void, and the lessor shall then be entitled and authorized to take immediate possession of the land: *Provided*, That after restrictions are removed the lessor shall have and be entitled to any available remedy in law or equity for breach of the contract by the lessee.

On the following conditions, the lessee may, on approval of the Secretary of the Interior, surrender a lease or any part of it:

(a) That he make application for cancellation to the superintendent having jurisdiction over the land.

(b) That he pay a surrender fee of $1 at the time the application is made.

(c) That he pay all royalties and rentals due to the date of such application.

(d) That he make a satisfactory showing that full provision has been made for conservation and protection of the property and that all wells, drilled on the portion of the lease surrendered, have been property abandoned.

(e) If the lease has been recorded, that he file, with his application, a recorded release of the acreage covered by the application.

(f) If the application is for the cancellation of the entire lease or the entire undivided portion, that he surrender the lease: *Provided*, That where the application is made by an assignee to whom no copy of the lease was delivered, he will be required to surrender only his copy of the assignment.

(g) If the lease (or portion being surrendered or cancelled) is owned in undivided interests by more than one party, then all parties shall join in the application for cancellation.

(h) That all required fees and papers must be in the mail or received on or before the date upon which rents and royalties become due in order for the lessee and his surety to be relieved from liability for the payment of such royalties and rentals.

(i) If there has been a contest respecting a lease or leases, the approved, the disapproved, or the canceled parts thereof will be held in the office of the superintendent for 5 days after the Department's decision has been promulgated by mail or delivery, and will not be delivered, if within that period a motion for review or reconsideration be filed, until such motion is passed upon by the Department.

(j) In the event oil or gas is being drained from the leased premises by wells not covered by a lease, the lease, or any part of it, may be surrendered, only on such terms and conditions as the Secretary of the Interior may determine to be reasonable and equitable.

No part of any advance rental shall be refunded to the lessee nor shall he be relieved, by reason of any subsequent surrender or cancellation of the lease, from the obligation to pay said advance rental when it becomes due.

§ 173.23 Mines to be timbered properly.

In mining operations the lessee shall keep the mine well and sufficiently timbered at all points where necessary, in accordance with good mining practice and in such manner as may be necessary to the proper preservation of the property leased and safety of the workmen.

§ 173.24 Lessee and surety held responsible for return of premises in good condition.

On expiration of the term of a lease, or when a lease is surrendered, the lessee shall deliver to the Government the leased ground with the mine workings in good order and condition, and bondsmen will be held for such delivery in good order and condition, unless relieved by the Secretary of the Interior with the consent of the tribal council. It shall, however, be stipulated that the machinery necessary to operate the mine is the property of the lessee, but that it may be removed by him only after the condition of the property has been ascertained, by inspection by the Secretary of the Interior or his authorized agents, to be in satisfactory condition.

§ 173.25 Wasteful operations not permitted.

The Secretary of the Interior may, in his discretion, cancel any lease if the mining operations are conducted wastefully and without regard to good mining practice.

§ 173.26 Permission to start operations.

(a) No operations will be permitted on any lease before it is approved by the Secretary of the Interior.

(b) Written permission must be secured from the supervisor before any operations are started on the leased premises. After such permission is secured the operations must be in accordance with the operating regulations promulgated by the Secretary of the Interior. Copies of operating regulations may be secured from either the supervisor or the Superintendent and no operations should be attempted without a study of the operating regulations.

§ 173.27 Penalties.

Failure of the lessee to comply with any provision of the lease, of the operating regulations, of the regulations in this part, order of the superintendent or his representative, or of the orders of the supervisor or his representatives, shall subject the lease to cancellation by the Secretary of the Interior or the lessee to a penalty of not more than $500 per day for each and every day the terms of the lease, the regulations, or such orders are violated; or to both such penalty and cancellation: *Provided,* That the lessee shall be entitled to notice and hearing, within 30 days after such notice, with respect to the terms of the lease, regulations, or orders violated, which hearing shall be held by the supervisor, whose findings shall be conclusive unless an appeal be taken to the Secretary of the Interior within 30 days after notice of the supervisor's decision and the decision of the Secretary of the Interior upon appeal shall be conclusive.

§ 173.28 Fees.

The provisions of § 171.25 of this chapter, or as hereafter amended, are applicable to this part.

[24 FR 7949, Oct. 2, 1959]

§ 173.29 Forms.

The provisions of § 171.30 of this chapter, or as hereafter amended, are applicable to this part.

[24 FR 7949, Oct. 2, 1959]

PART 174—LEASING OF RESTRICTED LANDS OF MEMBERS OF FIVE CIVILIZED TRIBES, OKLAHOMA, FOR MINING

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Authority: Sec. 2, 35 Stat. 312, sec. 18, 41 Stat. 426, sec. 1, 45 Stat. 495, sec. 1, 47 Stat. 777; 25 U.S.C. 356. Interpret or apply secs. 3, 11, 35 Stat. 313, 316, sec. 8, 47 Stat. 779, unless otherwise noted.

Source: 22 FR 10599, Dec. 24, 1957, unless otherwise noted.

Cross Reference: For oil and gas operating regulations of the Geological Survey, see 30 CFR Part 221.

§ 174.1 Definitions. Area Director.

The term "Area Director" in this part refers to the officer in charge of the Five Civilized Tribes Indian Agency.

Supervisor. The term "supervisor" in this part refers to a representative of the Secretary of the Interior under direction of the Director of the United States Geological Survey, authorized and empowered to supervise and direct operations under oil and gas or other mining leases, to furnish scientific and technical information and advice, to ascertain and record the amount and value of production, and to determine

and record rentals and royalties due and paid.

HOW TO ACQUIRE LEASES

§ 174.2 Applications for leases.

Applications for leases should be made to the Area Director.

§ 174.3 No Government employee shall acquire leases.

No lease, assignment thereof, or interest therein will be approved to any employee or employees of the United States Government, whether connected with the Bureau of Indian Affairs or otherwise, and no employee of the Department of the Interior shall be permitted to acquire any interest in such leases covering restricted Indian lands by ownership of stock in corporations having leases or in any other manner.

(R.S. 2078; 25 U.S.C. 68)

§ 174.4 Sale of oil and gas leases.

(a) At such times and in such manner as he may deem appropriate, the Area Director shall publish notices at least thirty days prior to the sale, unless a shorter period is authorized by the Commissioner of Indian Affairs, that oil and gas leases on specific tracts, each of which shall be in a reasonably compact body, will be offered to the highest responsible bidder for a bonus consideration, in addition to stipulated rentals and royalties. Each bid must be accompanied by a cashier's check, certified check, or postal money order, payable to the payee designated in the invitation to bid, in an amount not less than 25 percent of the bonus bid. Within 30 days after notification of being the successful bidder, said bidder must remit the balance of the bonus, the first year's rental, and his share of the advertising costs, and shall file with the Area Director the lease in completed form. The Area Director may, for good and sufficient reasons, extend the time for the completion and submission of the lease form, but no extension shall be granted for remitting the balance of monies due. If the successful bidder fails to pay the full consideration within said period, or fails to file the completed lease within said period or extension thereof, or if the lease is disapproved through no fault of the lessor or the Department of the Interior, 25 percent of the bonus bid will be forfeited for the use and benefit of the Indian lessor.

(b) In cases where any part of the bonus bid for a lease is paid directly to the Indian lessor, upon his signing the lease, the lessee must procure and file with the lease an affidavit of the lessor, sworn to before a United States Commissioner, Postmaster, Area Director, local representative of the Area Director, county or district judge, Federal judge or clerk of a Federal court, showing the amount of bonus so paid, and the balance thereof must be paid into the office of the Area Director upon filing the lease. Where possible lessees are requested to take the lessor to the nearest United States field clerk who will render all proper assistance in the execution of leases, and before whom the bonus affidavit may be executed in cases where any part of bonus consideration is paid directly to the lessor. Where leases are executed by guardians, under order of court, the affidavit of lessor may be executed before a notary public.

(c) All notices or advertisements of sales of oil and gas leases shall reserve to the Secretary of the Interior the right to reject all bids when in his judgment the interests of the Indians will be best served by so doing, and that if no satisfactory bid is received, or if the accepted bidder fails to complete the lease or if the Secretary of the Interior shall determine that it is unwise in the interests of the Indians to accept the highest bid, the Secretary may readvertise such lease for sale, or if deemed advisable, with the consent of the Indian owners, a lease may be made by private negotiations. The successful bidder or bidders will be required to pay his or their share of the advertising costs. Amounts received from unsuccessful bidders will be returned; but when no bid is accepted on a tract, the costs of advertising will be assessed against the applicant who requested that said tract be advertised.

(Secs. 16, 17, 48 Stat. 987, 988, sec. 9, 49 Stat. 1968, sec. 4, 52 Stat. 348; 25 U.S.C. 396d, 476, 477, 509)

§ 174.5 Term of oil and gas leases.

Oil and gas mining leases which require the approval of the Secretary of the Interior may be made for periods of 10 years from the date of approval of lease by the Secretary of the Interior and as much longer thereafter as oil and/or gas is produced in paying quantities.

§ 174.6 Leases for minerals other than oil and gas.

Uncontested mining leases for minerals other than oil and gas shall be made on forms[1] prescribed by the Department, for a period of 15 years with the right of renewal on such terms as the superintendent may prescribe, and shall be subject only to approval by the Area Director. See provisions of the act of February 14, 1920 (41 Stat. 408). Any persons aggrieved by any decision or order of the Area Director approving, rejecting, or disapproving any such lease may appeal from the same to the Secretary of the Interior within 30 days from the date of such decision or order.

§ 174.7 Fees.

The provisions of § 171.25 of this chapter, or as hereafter amended, are applicable to this part.

[24 FR 7949, Oct. 2, 1959]

§ 174.8 Filing of lease deemed constructive notice.

The filing of any lease in the office of the Area Director shall be deemed constructive notice of the existence of such lease. See act of March 1, 1907.

(34 Stat. 1026)

§ 174.9 Noncontiguous tracts.

No lease will be approved covering two or more noncontiguous tracts of land, but in such case a lease must be executed on each separate tract.

§ 174.10 Lessor's signature.

Any Indian who cannot write his name will be required to sign all official papers by making a distinct thumbprint which shall be designated as "right" or "left" thumbmark. Such signatures must be witnessed by two persons, one of whom must be a United States Government employee (such as field clerk, postmaster, United States Commissioner, etc.).

§ 174.11 Minor lessors.

Where the lessor is a minor, certified copies of letters of guardianship and court orders approving leases must be filed.

§ 174.12 Leases executed by guardians of minors.

Leases executed by guardians of minors under order of court for a period extending beyond the minority of the minor will be approved unless it appears that such action would be prejudicial to the interests of the minor: *Provided*, That in the event the minor becomes of age within 1 year from the date of execution of lease the consent of the minor to the execution of the lease should be obtained and submitted with the lease for consideration.

§ 174.13 Inherited lands.

Except to prevent loss or waste, leases on undivided inherited lands will not be approved until the heirship determination has been approved. If the heirs to undivided inherited lands are undetermined or cannot be located, or if the heirs owning less than one-half interest in the lands refuse to sign a lease and it appears necessary to lease the lands to prevent loss or waste, the Area Director will report the facts to the Commissioner of Indian Affairs and ask for instructions. Minor heirs can lease or joint adult heirs in leasing only through guardians under order of court. Proof of heirship shall be given upon Form F prescribed. If probate or other court proceedings have established the heirship in any case, or the land has been partitioned, certified copy of final order, judgment, or decree of the court will be accepted in lieu of Form F.

§ 174.14 Corporations and corporate information.

If the applicant for a lease is a corporation, it shall file evidence of authority of its officers to execute

[1] For further information regarding forms, see § 171.30.

papers; and with its first application it shall also file a certified copy of its articles of incorporation, and, if foreign to the State in which the lands are located, evidence showing compliance with the corporation laws thereof. Statements of changes in officers and stockholders shall be furnished by a corporation lessee to the Area Director January 1 of each year, and at such other times as may be requested.

Whenever deemed advisable in any case the Area Director may require a corporation applicant or lessee to file:

(a) List of officers, principal stockholders, and directors, with post office addresses and numbers of shares held by each.

(b) A sworn statement of the proper officer showing:

(1) The total number of shares of the capital stock actually issued and the amount of cash paid into the treasury on each share sold; or, if paid in property, the kind of quantity and value of the same paid per share.

(2) Of the stock sold, how much remains unpaid and subject to assessment.

(3) The amount of cash the company has in its treasury and elsewhere.

(4) The property, exclusive of cash, owned by the company and its value.

(5) The total indebtedness of the company and the nature of its obligations.

(6) Whether the applicant or any person controlling, controlled by or under common control with the applicant has filed any registration statement, application for registration, prospectus or offering sheet with the Securities and Exchange Commission pursuant to the Securities Act of 1933 or the Securities Exchange Act of 1934 or said Commission's rules and regulations under said acts; if so, under what provision of said acts or rules and regulations; and what disposition of any such statement, application, prospectus or offering sheet has been made.

(c) Affidavits of individual stockholders, setting forth in what corporations, or with what persons, firms, or associations such individual stockholders are interested in mining leases on restricted lands within the State, and whether they hold such interest for themselves or in trust.

CROSS REFERENCE: For regulations of the Securities and Exchange Commission, see 17 CFR Chapter II.

§ 174.15 Bonds.

(a) Lessee shall furnish with each mining lease a bond (Form 5-154b), and an assignee of a lease shall furnish with each assignment a bond (Form 5-154m), with an acceptable company authorized to act as sole surety, or with two or more personal sureties and a deposit as collateral security of any public-debt obligations of the United States guaranteed as to principal and interest by the United States, equal to the full amount of such bonds, or other collateral satisfactory to the Secretary of the Interior, or show ownership of unencumbered real estate of the value equal to twice the amount of the bonds. Lessee may file a bond on Form 5-154a without sureties and a deposit as collateral security of Government bonds equal in value to the full amount of the bond. Lease bonds, except as provided in paragraph (c) of this section, shall not be less than the following amounts:

For less than 80 acres
$1,000
For 80 acres and less than 120 acres
1,500
For 120 acres and not more than 160 acres
2,000
For each additional 40 acres, or part thereof above 160 acres
500

Provided, That for leases for minerals other than oil and gas the Secretary of the Interior or his authorized representative with the consent of the Indian landowner may authorize a bond for a lesser amount if, in his opinion, the circumstances warrant and the interests of the Indian landowners are fully protected: *Provided further*, That a lessee may file a bond (Form 5-154f), in the sum of $15,000 for all leases of minerals up to 10,240 acres under the jurisdiction of the officer in charge of the Five Civilized Tribes Agency.

(b) In lieu of the bonds required under paragraph (a) of this section, a lessee may furnish a bond (Form 5-156) in the sum of $75,000 for full nationwide coverage with an acceptable company authorized to act as sole surety to cover all oil and gas leases

and oil and gas prospecting permits without geographic or acreage limitation to which the lessee or permittee is or may become a party.

(c) The right is specifically reserved to increase the amount of bonds and the collateral security prescribed in paragraph (a) of this section in any particular case when the officer in charge deems it proper to do so. The nationwide bond may be increased at any time in the discretion of the Secretary of the Interior.

[22 FR 10599, Dec. 24, 1957, as amended at 26 FR 164, Jan. 10, 1961]

§ 174.16 Additional information may be requested by Area Director.

The Area Director, or other Government officer having the matter in charge or under investigation, may, at any time, either before or after approval of a lease, call for any additional information desired to carry out the purpose of the regulations in this part, and such information shall be furnished within the time specified in the request therefor. If the lessee fails to furnish the information requested, the lease will be subject to disapproval or cancellation, whichever is appropriate.

§ 174.17 Government reserves right to purchase minerals produced.

In time of war or other public emergency any of the executive departments of the United States Government shall have the option to purchase at the prevailing market price on the date of sale all or any part of the minerals produced under any lease.

Rents and Royalties

§ 174.18 Manner of payment of rents and royalties.

(a) Except as provided in paragraph (b) of this section, all rents, royalties and other payments due under leases which have been or may be approved in accordance with this part shall be paid by check or bank draft to the order of the Treasurer of the United States and mailed to the Area Director for deposit to the credit of the various lessors. When lessees and purchasers are instructed, in writing, by the Area Director, which instructions shall be complete as to lessors for each lease, separate remittances for each payment due each lessor shall be mailed to the Area Director. Any payments under this paragraph, covering lands or interests therein from which restrictions have been removed by death or otherwise, may continue to be made in the manner provided by this paragraph until ten days after notice of relinquishment of supervision has been mailed to the lessee.

(b) The Area Director may, in his discretion, whenever it appears to be in the best interest of any lessor, authorize and direct the lessee to pay directly to the lessor, or to the legal guardian of any lessor under guardianship, the rents, royalties and other payments (other than bonuses and advance payments for the first year) due under leases which have been or may be approved in accordance with the regulations in this part. Any such authority for direct payment shall be in writing, addressed to the owner or owners of the lease, and shall expressly provide for its revocation or modification at any time, in writing, by the Area Director. Written authorization for direct payment and written revocations or modifications thereof shall become a part of the lease and shall be distributed as in the case of original leases. All such revocations or modifications shall have a 5-day grace period after date of receipt. Rents, royalties, and other payments paid in accordance therewith shall constitute full compliance with the requirements of the lease pertaining to such payments.

(c) Rents and royalties paid pursuant to paragraphs (a) and (b) of this section on producing leases shall be supported by statements, acceptable to the Secretary or his duly authorized representative, to be transmitted to the Supervisor, in duplicate, covering each lease, identified by contract number and lease number. Such statements shall show the specific items of rents or royalties for which remittances are made, and shall identify each remittance by the remittance number, date, amount, and name of each payee.

(d) Rents paid on nonproducing leases pursuant to paragraphs (a) and (b) of this section shall be supported

by a statement, acceptable to the Area Director, to be transmitted to the Area Director covering each lease, identified by contract number and lease number. Each remittance shall be identified by the remittance number, date, amount, name of each payee, and dates of mailing of remittances. Date of mailing, or, if remittance is sent by registered mail, the date of registration receipts covering remittances mailed, shall be considered as date of payment.

(e) For leases other than oil and gas, all advance rentals and royalties for the first year shall be paid to the Area Director at the time of filing the lease, and the advance royalty and 20 percent of the first year's rental so paid shall be and become the property of the lessor, if the lease be disapproved because of the lessee's failure to meet the requirements of the law or of the regulations in this part or because of any other fault or defect chargeable to the lessee.

§ 174.19 Crediting advance annual payments.

In the event of discovery of minerals, all advance rents and advance royalties shall be allowed as credit on stipulated royalties for the year for which such advance payments have been made. No refund of such advance payments made under any lease will be allowed in the event the royalty on production is not sufficient to equal such advance payment; nor will any part of the moneys so paid be refunded to the lessee because of any subsequent surrender or cancellation of the lease.

§ 174.20 [Reserved]

§ 174.21 Rate of rents on leases other than oil and gas.

On all mineral leases of allotted lands other than oil and gas leases, rental shall be paid annually in advance from the date of approval of the lease, as follows: Fifty cents per acre for the first year, 75 cents per acre for the second year, and $1 per acre for the third and each succeeding year of the term of the lease.

§ 174.22 Expenditures under lease other than oil and gas.

(a) On all leases for deposits of minerals other than oil and gas, there shall be expended for each calendar year the lease is in force, and for each fraction of a calendar year greater than 6 months, in actual mining operations, development, or improvements upon the lands leased, or for the benefit thereof, a sum which, with the annual rental, shall amount to not less than $5 per acre.

(b) The expenditures for development required by this section upon application may be waived in writing by the Area Director or other officer in charge of the Five Civilized Tribes Agency either before or after the approval of a lease, such waiver to be subject to termination at any time upon 10 days' written notice to the holder of the lease by the said Area Director or other officer in charge.

(c) Each lessee, except oil and gas lessees, shall file with the Area Director an itemized statement in duplicate, within 20 days after the close of each calendar year, of the amount and character of said expenditures during such years the statement to be certified under oath by the lessee or his agent having personal knowledge of the facts contained therein.

§ 174.23 Royalty rates for minerals other than oil and gas.

Unless otherwise authorized by the Commissioner of Indian Affairs, the minimum rates for minerals other than oil and gas shall be as follows:

(a) For substances other than gold, silver, copper, lead, zinc, tungsten, coal, asphaltum and allied substances, oil, and gas, the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 percent of the value, at the nearest shipping point, of all ores, metals, or minerals marketed.

(b) For gold and silver the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 percent to be computed on the value of bullion as shown by mint returns after deducting forwarding charges to the point of sale; and for copper, lead, zinc, and tungsten, a royalty of not less than 10 percent to

be computed on the value of ores and concentrates as shown by reduction returns after deducting freight charges to the point of sale. Duplicate returns shall be filed by the lessee with the Area Director within 10 days after the ending of the quarter or other period specified in the lease within which such returns are made: *Provided, however,* That the lessee shall pay a royalty of not less than 10 percent of the value of the ore or concentrates sold at the mine unless otherwise provided in the lease.

(c) For coal the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 cents per ton of 2,000 pounds of mine run, or coal as taken from the mine, including what is commonly called "slack."

(d) For asphaltum and allied substances the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 cents per ton of 2,000 pounds on crude material or not less than 60 cents per ton on refined substances.

§ 174.24 Rate of rents and royalties on oil and gas leases.

The lessee shall pay, beginning with the date of approval of oil and gas leases by the Secretary of the Interior, a rental of $1.25 per acre per annum in advance during the continuance thereof, together with a royalty of 12½ percent of the value or amount of all oil, gas and/or natural gasoline, and/or all other hydrocarbon substances produced and saved from the land leased, save and except oil and/or gas used by the lessee for development and operation purposes on the lease, which oil or gas shall be royalty free. A higher rate of royalty may be fixed by the Secretary of the Interior or his authorized representative, prior to the advertisement of land for oil and gas leases. During the period of supervision, "value" for the purposes of the lease may, in the discretion of the Secretary of the Interior be calculated on the basis of the highest price paid or offered (whether calculated on the basis of short or actual volume) at the time of production for the major portion of the oil of the same gravity, and gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and sold from the field where the leased lands are situated, and the actual volume of the marketable product less the content of foreign substances as determined by the supervisor. The actual amount realized by the lessee from the sale of said products may, in the discretion of the Secretary of the Interior, be deemed mere evidence of or conclusive evidence of such value. When paid in value, such royalties shall be due and payable monthly at such time as the lease provides; when royalty on oil produced is paid in kind, such royalty oil shall be delivered in tanks provided by the lessee on the premises where produced without cost to the lessor unless otherwise agreed to by the parties thereto, at such time as may be required by the lessor. The lessee shall not be required to hold such royalty oil in storage longer than 30 days after the end of the calendar month in which said oil is produced. The lessee shall be in no manner responsible or held liable for loss or destruction of such oil in storage by causes beyond his control.

§ 174.25 Free use of gas by lessor.

If the leased premises produce gas in excess of the lessee's requirements for the development and operation of said premises, then the lessor may use sufficient gas, free of charge, for all stoves and inside lights in the principal dwelling house on said premises, by making his own connections to a regulator, connected to the well and maintained by the lessee, and the lessee shall not be required to pay royalty on gas so used. The use of such gas shall be at the lessor's risk at all times.

§ 174.26 Rate of royalty on casing-head gas.

(a) On casing-head gas used or sold for the manufacture of casing-head gasoline the minimum rate of royalty shall be 12½ percent of the value of the casing-head gas, which value shall be determined and computed on the basis and in the manner provided in the applicable operating regulations of the Department.

(b) In cases where gas produced and sold has a value for drip gasoline,

casing-head gasoline content, and as dry gas from which the casing-head gasoline has been extracted, then the royalties above provided shall be paid on all such values.

§ 174.27 Rate of rental for nonutilized gas wells.

If the gas from a gas producing well is not marketed or utilized, other than for operation of the lease, then for each such well the lessee shall pay such rental as may be determined by the supervisor and approved by the Secretary of the Interior, calculated from the date of the completion of the well. Payment of annual gas rentals shall be made within 30 days from the date such payment becomes due.

§ 174.28 Royalty payments and production reports.

(a) Royalty payments on all oil and gas or other producing leases shall be made at the rates, and at such time, and in the manner prescribed by the terms of the lease.

(b) Quarterly reports shall be made by each lessee on nonproducing leases other than oil and gas within 25 days after December 31, March 31, June 30, and September 30, of each year, upon forms provided, showing manner of operations and total production during such quarter. A lessee may include within one sworn statement all leases upon which there is no production or upon which dry holes have been drilled. Reports of oil and gas leases where royalty accounting is done in the field office of the supervisor will be made as required in the operating regulations.

§ 174.29 Division orders.

(a) Lessees may make arrangements with the purchasers of oil and gas for the payment of the royalties as provided for in the lease and the regulations but such arrangement, if made, shall not operate to relieve a lessee from responsibility should the purchaser fail or refuse to pay royalties when due. Where lessees avail themselves of this privilege, division orders should be executed by the lessee and forwarded to the supervisor for approval. Purchasers may be authorized by the supervisor to reimburse lessees out of royalties for advance rents and advance royalties. Copies of written instructions, notices, modifications, revocations, and authorizations, as provided for in § 174.18 (a) and (b), shall be furnished to purchasers. The right is reserved for the supervisor to cancel a division order at any time or require the purchaser to discontinue to run the oil of any lessee who fails to operate the lease properly or otherwise violates the provisions of the lease, of the regulations in this part, or of the operating regulations.

(b) When oil is taken by authority of a division order, the lessee or his representatives shall be actually present when the oil is gauged and records are made of the temperature, gravity, and impurities. The lessee will be held responsible for the correctness and the correct recording and reporting of all the foregoing measurements, which, except lowest gauge, shall be made at the time the oil is turned into the pipeline. Failure of the lessee to perform properly these duties will subject the division order to revocation.

OPERATIONS

§ 174.30 Permission to start operations.

No operations will be permitted on any lease before it is approved. Written permission must be secured from the supervisor before any operations are started under any oil and gas lease. Operations must be in accordance with the operating regulations promulgated by the Secretary of the Interior. Copies of these regulations may be secured from either the supervisor or the Area Director and no operations should be attempted without a study of the operating regulations.

§ 174.31 Restrictions on operations.

(a) Oil and gas leases issued under the provisions of this part shall be subject to imposition by the Secretary of the Interior of such restrictions as to time or times for the drilling of wells and as to the production from any well or wells as in his judgment may be necessary or proper for the protection of the natural resources of the leased land and in the interest of the lessor. In the exercise of his judgment the Secretary of the Interior

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may take into consideration, among other things, the Federal laws, State laws, regulations by competent Federal or State authorities, lawful agreements among operators regulating either drilling or production, or both.

(b) All such leases shall be subject to any cooperative or unit plan of development affecting the leased lands that may be required by the Secretary of the Interior, but no lease shall be included in any cooperative or unit plan without prior approval of the Secretary of the Interior. If said plan effects a change in the lease terms, the consent of the lessor or lessors must be obtained before the plan is effective.

§ 174.32 Wells.

The lessee shall agree (a) to drill and produce all wells necessary to offset or protect the leased land from drainage by wells on adjoining lands not the property of the lessor, or in lieu thereof, compensate the lessor in full each month for the estimated loss of royalty through drainage: *Provided,* That during the period of supervision by the Secretary of the Interior, the necessity for offset wells shall be determined by the supervisor and payment in lieu of drilling and producing shall be with the consent of, and in an amount determined by the Secretary of the Interior; (b) at the election of the lessee to drill and produce other wells: *Provided,* That the right to drill and produce such other wells shall be subject to any system of well spacing or production allotments authorized and approved under applicable law or regulations, approved by the Secretary of the Interior and affecting the field or area in which the leased lands are situated; and (c) if the lessee elects not to drill and produce such other wells for any period the Secretary of the Interior may, within 10 days after due notice in writing, either require the drilling and production of such wells to the number necessary, in his opinion, to insure reasonable diligence in the development and operation of the property, or may in lieu of such additional diligent drilling and production require the payment on and after the first anniversary date of the lease of not to exceed $1 per acre per annum, which sum shall be in addition to any rental or royalty herein specified.

§ 174.33 Diligence and prevention of waste.

The lessee shall exercise diligence in drilling and operating wells for oil and gas on the leased lands while such products can be secured in paying quantities; carry on all operations in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land, or the entrance of water through wells drilled by the lessee to the productive sands or oil or gas-bearing strata to the destruction or injury of the oil or gas deposits, the preservation and conservation of the property for future productive operations, and to the health and safety of workmen and employees; plug securely all wells before abandoning the same and to shut off effectually all water from the oil or gas-bearing strata; not drill any well within 200 feet of any house or barn on the premises without the lessor's written consent approved by the Area Director; carry out at his expense all reasonable orders and requirements of the supervisor relative to prevention of waste, and preservation of the property and the health and safety of workmen; bury all pipelines crossing tillable lands below plow depth unless other arrangements therefor are made with the Area Director; pay the lessor all damages to crops, buildings, and other improvements of the lessor occasioned by the lessee's operations: *Provided,* That the lessee shall not be held responsible for delays or casualties occasioned by causes beyond his control.

§ 174.34 Inspection of premises; books and accounts.

Lessees shall agree to allow the lessors and their agents or any authorized representative of the Interior Department to enter, from time to time, upon and into all parts of the leased premises for the purpose of inspection, and shall further agree to keep a full and correct account of all operations and make reports thereof, as required by the applicable regulations of the Department; and their books and rec-

ords, showing manner of operations and persons interested, shall be open at all times for examination by such officers of the Department as shall be instructed in writing by the Secretary of the Interior or authorized by regulations to make such examination.

§ 174.35 Mines to be timbered properly.

In mining operations the lessee shall keep the mine well and sufficiently timbered at all points where necessary, in accordance with good mining practice, and in such manner as may be necessary to the proper preservation of the property leased and safety of workmen.

§ 174.36 Surrender of leased premises in good condition.

On expiration of the term of a lease, or when a lease is surrendered, the lessee shall deliver to the Government the leased ground, with the mine workings in case of leases other than oil and gas, in good order and condition, and the bondsmen will be held for such delivery in good order and condition, unless relieved by the Secretary of the Interior for cause. It shall, however, be stipulated that the machinery necessary to operate any mine is the property of the lessee, but that it may be removed by him only after the condition of the property has been ascertained by inspection by the Secretary of the Interior or his authorized agents, to be in satisfactory condition.

§ 174.37 Penalties.

Failure of the lessee to comply with any provisions of the lease, of the operating regulations, of the regulations in this part, orders of the Area Director or his representative, or of the orders of the supervisor or his representative, shall subject the lease to cancellation by the Secretary of the Interior or the lessee to a penalty of not more than $500 per day for each day the terms of the lease, the regulations, or such orders are violated, or to both such penalty and cancellation: *Provided*, That the lessee shall be entitled to notice and hearing, within 30 days after such notice, with respect to the terms of the lease, regulations, or orders violated, which hearing shall be held by the supervisor, whose findings shall be conclusive unless an appeal be taken to the Secretary of the Interior within 30 days after notice of the supervisor's decision, and the decision of the Secretary of the Interior upon appeal shall be conclusive.

§ 174.38 Assignments and overriding royalties.

(a) Leases or any interest therein, may be assigned or transferred only with the approval of the Secretary of the Interior, and to procure such approval the assignee must be qualified to hold such lease under existing rules and regulations, and shall furnish a satisfactory bond for the faithful performance of the covenants and conditions thereof. No lease or any interest therein, or the use of such lease, shall be assigned, sublet, or transferred, directly or indirectly, by working or drilling contract, or otherwise, without the consent of the Secretary of the Interior. Assignments of leases shall be filed with the Area Director within 20 days after the date of execution.

(b) An agreement creating overriding royalties or payments out of production on oil and gas leases under this part shall be subject to the provisions of § 171.26(d) of this subchapter, or as hereafter amended.

[22 FR 10599, Dec. 24, 1957, as amended at 23 FR 9758, Dec. 18, 1958]

§ 174.39 Stipulations.

The lessee under any lease heretofore approved may by stipulation (Form 5-154i) with the consent of the lessor and the approval of the Secretary of the Interior, make such approved lease subject to all the terms, conditions, and provisions contained in the lease form and regulations currently in use. Stipulations shall be filed with the Area Director within 20 days after the date of execution.

§ 174.40 Cancellations.

(a) When, in the opinion of the Secretary of the Interior, the lessee has violated any of the terms and conditions of a lease or of the applicable regulations, or if mining operations are conducted wastefully and without regard to good mining practice, the Secretary of the Interior shall have

the right at any time after 30 days' notice to the lessee specifying the terms and conditions violated, and after a hearing, if the lessee shall so request within 30 days after issuance of the notice, to declare such lease null and void, and the lessor shall then be entitled and authorized to take immediate possession of the land.

(b) On the following conditions, the lessee may, on approval of the Secretary of the Interior, surrender a lease or any part of it:

(1) That he make application for cancellation to the Area Director having jurisdiction over the land.

(2) That he pay a surrender fee of $1 at the time the application is made.

(3) That he pay all royalties and rentals due to the date of such application.

(4) That he make a satisfactory showing that full provision has been made for conservation and protection of the property and that all wells, drilled on the portion of the lease surrendered, have been properly abandoned.

(5) If the lease has been recorded, that he file, with his application, a recorded release of the acreage covered by the application.

(6) If the application is for the cancellation of the entire lease or the entire undivided portion, that he surrender the lease: *Provided*, That where the application is made by an assignee to whom no copy of the lease was delivered, he will be required to surrender only his copy of assignment.

(7) If the lease (or portion being surrendered or canceled) is owned in undivided interests by more than one party, then all parties shall join in the application for cancellation.

(8) That all required fees and papers must be in the mail or received on or before the date upon which rents and royalties become due, in order for the lessee and his surety to be relieved from liability for the payment of such royalties and rentals.

(9) If there has been a contest respecting a lease or leases, the approved, the disapproved, or the canceled parts thereof will be held in the office of the Area Director for 5 days after the Department's decision has been promulgated, by mail or delivery, and will not be delivered, if within that period a motion for review and reconsideration be filed, until such motion is passed upon by the Department.

(10) In the event oil or gas is being drained from the leased premises by wells not covered by a lease; the lease, or any part of it, may be surrendered, only on such terms and conditions as the Secretary of the Interior may determine to be reasonable and equitable.

(c) No part of any advance rental shall be refunded to the lessee nor shall he be relieved, by reason of any subsequent surrender or cancellation of the lease, from the obligation to pay said advance rental when it becomes due.

(d) For proper method of terminating departmental leases covering lands from which restrictions have been removed see section 3 of the act of May 27, 1908 (35 Stat. 312).

Removal of Restrictions

§ 174.41 Leases executed but not approved before restrictions removed from land.

Leases executed before the removal of restrictions against alienation on land from all of which restrictions against alienation shall be removed after such execution, if such leases contain specific provisions for approval by the Secretary of the Interior, whether now filed with the Department or presented for consideration hereafter, will be considered and acted upon by this Department as heretofore but only for the purpose of approving or disapproving the instrument.

§ 174.42 Operations after removal of restrictions from leased lands.

(a) Oil and gas leases heretofore approved and leases for other minerals now or hereafter in force on land from all of which restrictions against alienation have been or shall be removed, even if such leases contain provision authorizing supervision by this Department, shall after such removal of restrictions against alienation, be operated entirely free from such supervision, and the authority and power delegated to the Secretary of the Interior

in said leases shall cease and all payments required to be made to the Area Director shall thereafter be made to the lessor or the then owner of the land, and changes in regulations thereafter made by the Secretary of the Interior shall not apply to such leased land from which said restrictions are removed.

(b) In the event restrictions are removed from a part of the land included in any lease to which this section applies the entire lease shall continue subject to the supervision of the Secretary of the Interior, and all royalties thereunder shall be paid to the Area Director until such time as the lessor and lessee shall furnish the Secretary of the Interior satisfactory information that adequate arrangements have been made to account for the oil, gas or mineral upon the restricted land separately from that upon the unrestricted. Thereafter the restricted land only shall be subject to the supervision of the Secretary of the Interior: *Provided*, That the unrestricted portion shall be relieved from such supervision as in the lease or regulations provided.

§ 174.43 Relinquishment of Government supervision.

All oil and gas leases hereafter executed shall contain the following relinquishment of supervision clause and terms operative after such relinquishment, or other provisions similar in substance:

Relinquishment of supervision by the Secretary of the Interior.—Should the Secretary of the Interior, at any time during the life of this instrument, relinquish supervision as to all or part of the acreage covered hereby, such relinquishment shall not bind lessee until said Secretary shall have given 30 days' written notice. Until said requirements are fulfilled, lessee shall continue to make all payments due hereunder as heretofore in section 3(c). After notice of relinquishment has been received by lessee, as herein provided this lease shall be subject to the following further conditions:

(a) All rentals and royalties thereafter accruing shall be paid in the following manner: Rentals and royalties shall be paid to lessor or his successors in title, or to a trustee appointed under the provision of section 9 hereof. Rentals and royalties shall be paid directly to lessor, his successors in title, or to said trustee as the case may be.

(b) If, at the time supervision is relinquished by the Secretary of the Interior, lessee shall have made all payments then due hereunder, and shall have fully performed all obligations on its part to be performed up to the time of such relinquishment, then the bond given to secure the performance hereof, on file in the Indian Office, shall be of no further force or effect.

(c) Should such relinquishment affect only part of the acreage, then lessee may continue to drill and operate the land covered hereby as an entirety: *Provided*, That lessee shall pay in the manner prescribed by section 3(c), for the benefit of lessor such proportion of all rentals and royalties due hereunder as the acreage retained under the supervision of the Secretary of the Interior bears to the entire acreage of the lease, the remainder of such rentals and royalties to be paid directly to lessor or his successors in title or said trustee as the case may be, as provided in subdivision (a) of this section.

Division of fee. It is covenanted and agreed that should the fee of said land be divided into separate parcels, held by different owners, or should the rental or royalty interests hereunder be so divided in ownership, after the execution of this lease and after the Secretary of the Interior relinquishes supervision hereof, the obligations of lessee hereunder shall not be added to or changed in any manner whatsoever save as specifically provided by the terms of this lease. Notwithstanding such separate ownership, lessee may continue to drill and operate said premises as an entirety: *Provided*, That each separate owner shall receive such proportion of all rentals and royalties accruing after the vesting of his title as the acreage of the fee, or rental or royalty interest, bears to the entire acreage covered by the lease; or to the entire rental and royalty interest as the case may be: *Provided further*, That, if, at any time after departmental supervision hereof is relinquished, in whole or in part, there shall be four or more parties entitled to rentals or royalties hereunder, whether said parties are so entitled by virtue of undivided interests or by virtue of ownership of separate parcels of the land covered hereby, lessee at his election may withhold the payment of further rentals or royalties (except as to the portion due the Indian lessor while under restriction), until all of said parties shall agree upon and designate in writing and in a recordable instrument a trustee to receive all payments due hereunder on behalf of said parties and their respective successors in title. Payments to said trustee shall constitute lawful payments hereunder, and the sole risk of an improper or unlawful distribution of said funds by said trustee shall rest upon the parties naming said trustee and their respective successors in title. (The above pro-

visions are copied from oil and gas mining lease Form 5-154h,[1] revised April 24, 1935.)

§ 174.44 Division of royalty to separate fee owners.

Should the removal of restrictions affect only part of the acreage covered by a lease containing provisions to the effect that the royalties accruing under the lease, where the fee is divided into separate parcels, shall be paid to each owner in the proportion which his acreage bears to the entire acreage covered by the lease, the lessee or assignee of such unrestricted portion will be required to make the reports required by the regulations in this part and the operating regulations with respect to the beginning of drilling operations, completion of wells, and production the same as if the restrictions had not been removed. In the event the unrestricted portion of the leased premises is producing, the owner of the lease thereon will be required to pay the portion of the royalties due the Indian lessor at the time and in the manner specified by the regulations in this part.

§ 174.45 Restrictions especially continued as to certain lands.

Restricted lands allotted as either homestead or surplus allotments, designated as tax exempt under section 4 of the act of May 10, 1928, as amended May 24, 1928 (45 Stat. 495, 733), the entire interest in which was acquired by inheritance, gift, devise, or purchase with restricted funds, by persons of one-half or more Indian blood, after the passage of the act of January 27, 1933 (47 Stat. 777), continue to be restricted under the provisions of the last mentioned act and oil and gas leases thereof are subject to the regulations in this part and all such leases to be valid must be approved by the Secretary of the Interior. Lands inherited by or devised to full blood Indians prior to the act of January 27, 1933 are not affected as to restrictions by the provisions of said act and may continue to be leased with the approval of the county court having jurisdiction of the estate of the deceased allottee and without approval of the Secretary of the Interior (54 L.D. 382; 10 F. (2d), 487). Lands acquired prior to the passage of the act of January 27, 1933 by Indians of less than full blood, whether such lands were restricted and tax exempt or restricted and taxable, passed to such persons free of all restrictions. Inherited homesteads restricted prior to April 26, 1931, by section 9,[2] of the act of May 27, 1908 (35 Stat. 312), for the benefit of heirs of one-half or more Indian blood but less than full bloods, born after March 4, 1906, became unrestricted April 26, 1931, or upon the death prior thereto of the heir born subsequent to March 4, 1906, and oil and gas leases thereof are not subject to the regulations in this part nor under the jurisdiction of the Secretary of the Interior.

§ 174.46 Field clerks.

Local representatives known officially as "field clerks" are located in the various districts comprising that part of the State of Oklahoma occupied by the Five Civilized Tribes. Such field clerks shall report to and act under the direction of the Area Director. Any and all counsel and advice desired by allottees concerning deeds, leases, or other instruments or matters relating to lands allotted to them shall be furnished by such field clerks free of charge. Field clerks shall not, during their term of employment, have any personal interest, directly or indirectly, in any transaction concerning leases covering lands of allottees or in the purchase or sale of any such lands regardless of whether the restrictions have or have not been removed. This prohibition, however, shall not apply to lands which such field clerks have legally acquired before their employment in the Bureau of Indian Affairs. Field clerks shall report to the Area Director at the end of each month the work performed during such period and special reports shall be made immediately of any apparently illegal transaction involving the estates or allotments of allottees.

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[1] For information relative to obtaining Form 5-154h, see § 171.30.

[2] Repealed restrictions on inherited homesteads, by sec. 2 of the act of May 10, 1928 (45 Stat. 495).

§ 174.47 Forms.

The provisions of § 171.30 of this chapter, or as hereafter amended, are applicable to this part.

[24 FR 7949, Oct. 2, 1959]

§ 174.48 Effective date.

The regulations in this part shall become effective and in full force from and after the date of approval (Apr. 27, 1938), and shall be subject to change or alteration at any time by the Secretary of the Interior: *Provided*, That no regulations made after the approval of any lease shall operate to affect the term of the lease, rate of royalty, rental, or acreage unless agreed to by both parties to the lease. All former regulations governing the leasing of individually owned lands of the Five Civilized Tribes for mining purposes are superseded by the regulations in this part.

§ 174.49 Scope of regulations.

The regulations in this part shall apply in so far as practicable to land purchased for Indians under the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C. 501-509), as well as to other lands of individual Indians of the Five Civilized Tribes.

PART 175—LEASING OF OSAGE RESERVATION LANDS, OKLAHOMA, FOR MINING, EXCEPT OIL AND GAS

Sec.

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175.30 Lessees must appoint local representative.

AUTHORITY: Sec. 3, 34 Stat. 543.

SOURCE: 22 FR 10605, Dec. 24, 1957, unless otherwise noted.

§ 175.1 Definition.

The term "officer in charge" shall refer to the superintendent of the Osage Indian Agency and school or other representative of the Government who may, for the time, be in charge of the Osage Agency and school, or any person who may be detailed by the Secretary of the Interior or the Commissioner of Indian Affairs to take charge of leasing or mining operations under the regulations in this part.

§ 175.2 Sale of leases.

Leases of minerals other than oil and gas may be negotiated with the tribal council after permission to do so has been obtained from the officer in charge. Leases with all papers required, shall be filed with the officer in charge within 30 days from the date of execution by the lessee and the principal chief of the Osage Tribe. The lease will be forwarded to the Commissioner of Indian Affairs for consideration by him and the Secretary of the Interior and will become effective only after approval by the Secretary of the Interior. If any lease should be disapproved through no fault of the lessee, all amounts deposited by him will be promptly refunded.

§ 175.3 Corporate information.

A corporation shall file with its first lease a certified copy of articles of incorporation, and, if a foreign corporation, evidence showing compliance with local corporation laws in dupli-

cate; a list of all stockholders, with their postoffice addresses, and showing the number of shares of capital stock held by each; together with a sworn statement of its proper officer showing:

(a) The total number of shares of the capital stock actually issued, the number of shares actually sold and the amount of cash paid into the treasury out of the stock sold, or, if paid in property, kind, quantity, and value of the same.

(b) Of the stock sold, how much per share remains unpaid and subject to assessment.

(c) How much cash the company has in its treasury and elsewhere, and from what source it was received.

(d) What property, exclusive of cash, is owned by the company, and its value.

(e) What the total indebtedness of the company is, and the nature of its obligations.

(f) Names of officers and directors.

§ 175.4 Bonds.

Lessee shall furnish with each lease at the time it is filed with the officer in charge an acceptable bond not less than the following amounts:

For less than 80 acres	$1,000
For 80 acres and less than 120 acres	1,500
For 120 acres and not more than 160 acres	2,000
For each additional 40 acres, or part thereof above 160 acres	500

Provided, That for leases for minerals other than oil and gas the Secretary of the Interior or his authorized representatives with the consent of the Indian landowner may authorize a bond for a lesser amount if, in his opinion, the circumstances warrant and the interests of the Indian landowners are fully protected: *Provided further,* That the lessee shall be allowed to file bond, Form S[1] covering all leases to which he or they are or may become parties instead of a separate bond in each case, such bond to be in the penal sum of $15,000. The right is reserved to change the amount of the bond in any particular case, or to require a new bond in the discretion of the Secretary of the Interior.

[1]For further information concerning forms, see § 175.24.

[26 FR 164, Jan. 10, 1961]

§ 175.5 Additional information.

The officer in charge may, at any time, either before or after approval of a lease call for any additional information necessary to carry out the purpose and intent of the regulations in this part, and such information shall be furnished within the time specified in the request therefor.

§ 175.6 Failure of lessee to complete lease.

Should a lessee fail to furnish, within the time specified after his bid is accepted, the papers necessary to put his lease and bond in proper form for consideration, the officer in charge shall recommend that the sale be disapproved and money paid forfeited to the Osage Tribe.

§ 175.7 Operation not permitted until lease approved; 160 acres maximum for single lease.

No mining or work of any nature will be permitted upon any tract of land until a lease covering such tract shall have been approved by the Secretary of the Interior and delivered to the lessee. All leases shall be made for such period as the title to the minerals remain in the Osage Tribe, which time will expire April 8, 1931, unless otherwise provided by Congress and shall be subject to cancellation or termination as specified in this part. Leases made by corporations shall be accompanied by an affidavit by the secretary or president of the company showing the authority of its officers to execute leases, bonds, and other papers. No lease shall be made covering more than 160 acres.

§ 175.8 Acreage limitation.

No person, firm, or corporation shall hold under lease at any one time without special permission from the Secretary of the Interior in excess of the following areas:

(a) For deposits of the nature of lodes, or veins containing ores of gold, silver, copper, or other useful metals, 640 acres.

(b) For beds of placer gold, gypsum, asphaltum, phosphate, iron ores, and other useful minerals, other than coal, lead, and zinc, 960 acres.

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(c) For coal, 4,800 acres.
(d) For lead and zinc, 1,280 acres.

§ 175.9 Advance rental.

(a) Lessees shall pay, in addition to other considerations, annual advance rentals as follows: 15 cents per acre for the first year; 30 cents per acre for the second year; 50 cents per acre for the third year; and $1 per acre per annum for the fourth and each succeeding year during the life of any lease: *Provided*, That all such payments of advance rentals shall be credits on royalties on production during the year for which payment of advance rental is made.

(b) The payment of annual advance rental shall not release the lessee from the obligation to conduct mining operations, as required by the terms of the lease.

§ 175.10 Royalty rates.

Royalties will be required as follows, subject to the approval of the President, in accordance with the act of June 28, 1906 (34 Stat. 543):

(a) For gold, silver, or copper lessee shall pay quarterly a royalty of 10 percent to be computed on the gross value of the ores as shown by reduction returns after deducting freight and treatment charges. Duplicate reduction returns shall be filed by the lessee with the officer in charge within 20 days after the reduction of the ores.

(b) For coal the lessee shall pay a royalty of 10 cents per ton of 2,000 pounds on mine run or coal as taken from the mines, including what is commonly called "slack."

(c) For asphaltum and allied substances, the lessee shall pay quarterly a royalty of 10 cents per ton of 2,000 pounds on crude material, and 60 cents per ton on refined substances.

(d) For substances other than gold, silver, copper, lead, zinc, coal, and asphaltum the lessee shall pay quarterly a royalty of 10 percent of the value at the nearest shipping point of all ores, metals, or minerals marketed.

(e) The royalties to be paid for lead and zinc shall be computed for each mineral at the same rate that the amount of the concentrates of such mineral bears to the total amount of dirt or rock actually mined, except as stipulated in this section. The royalty so determined shall be increased by adding 1 percent for each increase of $10 in the selling price per ton thereof over and above the following, which shall be the agreed base or standard:

For zinc—$50
For lead—$65

but in no case shall the rate of royalty be less than 5 percent or more than 20 percent. The percentage of recovery shall be computed as nearly as practicable upon the ore included in each sale, but where it is impracticable so to do the officer in charge and the lessee shall agree upon some other method of computation which will produce substantially the same result: *Provided*, That in case of their disagreement the Commissioner of Indian Affairs shall prescribe a rule of computation to be followed in such cases.

NOTE: The royalty would always be determined under this rule by ascertaining the percentage of recovery were it not for two things: (1) the flat rates which are fixed as the minimum and the maximum rates of royalty and (2) variations in the selling price of the ores. Concrete examples coming under the rule are set forth in the following table:

ZINC

[Where the base or standard is $50 per ton]

Percentage of recovery	Selling price	Royalty
Percent		*Percent*
7	$48	7
14	49	14
12	50	12
15	60	16
30	60	20
9	70	11

A similar table might be constructed for royalties on lead, but in so doing it would be necessary to bear in mind that the base or standard selling price for the lead is to be $65 instead of $50.

§ 175.11 Payment of rents and royalties.

All rentals, royalties, damages, or other amounts which may become due under leases approved in accordance with the regulations in this part shall be paid to the disbursing agent at Pawhuska, Okla. The remittances shall be in St. Louis exchange, except that where such exchanges cannot be pro-

cured post office or express money orders will be accepted. All royalties or other payments or claims of the Osage Tribe arising under such leases shall be a lien upon the mining plant machinery, and all minerals mined on the property leased or in which the lessee still retains any right, claim, or interest.

§ 175.12 Time of payment of royalties.

Royalties on all minerals produced in any quarter (January-March, April-June, July-September, October-December) shall be paid on or before the 25th day of the month next succeeding, and the remittance shall be accompanied by sworn reports covering all operations, whether there has been production or not. Annual advance rentals shall be paid within 10 days after the beginning of the lease year.

§ 175.13 Diligence; annual expenditures; mining records.

(a) Lessees shall exercise diligence in the conduct of prospecting and mining operations, and on all leases referred to in § 175.8(a) shall expend annually in development work a sum which with the annual rental shall make an amount of not less than $5 per acre. On all leases referred to in § 175.8 (b) and (c) there shall be expended annually in development work a sum which inclusive of the annual rental shall make an amount of not less than $1 for each acre or fraction thereof included in the lease. The lands covered by each lease referred to in § 175.8 (d) shall be prospected for lead and zinc ores by drilling within 1 year test holes aggregating 2,000 feet unless a sufficient ore body is discovered to justify the sinking of a shaft to the ore body and the erecting of a mill when such tract may be released from further prospecting by the written consent of the superintendent: *Provided*, That within 90 days after an ore body of sufficient quantity is discovered, and shown by the logs or records of the drill holes, to justify the expenditure, the sinking of a shaft to the ore body, and the erection of a mill shall be commenced and continued to completion without cessation of work thereon, barring unavoidable accidents or causes beyond the control of the lessee.

(b) Lessee shall keep upon the leased premises accurate records of the drilling, redrilling, or deepening of all holes showing the formations, and upon the completion of such holes, copies of such records shall be transmitted to the superintendent by the lessee after the first completion and of any further drilling thereafter, and a failure to so furnish report within the time prescribed shall be considered a violation of the regulations. Lessee shall, before commencing operations, file with the superintendent a plat and preliminary statement of how the openings are to be made and the property developed.

§ 175.14 Use of surface lands.

(a) Lessees may use so much of the surface of the leased land as shall be reasonably necessary for the prospecting and mining operations and buildings required by the lease, and shall also have the right-of-way over and across such land to any point of prospecting or mining operations, but such use of the surface shall be permissible only under condition of least injury and inconvenience to the allottee or owner of the land. Lessees before commencing and during such operations shall pay all reasonable damages for the use of the surface land and to any growing crops thereon, or to improvements on said land, or any damage that during the life of the lease may be occasioned in any manner whatsoever by the use of the surface, to the allottee or his successor in interest or assignee, or to a lessee of the surface of said land or to an oil and gas lessee, damages to be apportioned among the parties interested in the surface, whether as owner, lessee, or otherwise, as the parties in interest may mutually agree or as their interests may appear. If the parties are unable to agree concerning damages the same shall be determined by arbitration.

(b) All agreements (or authenticated copies thereof) providing for the settlement of damages shall be filed in the Osage Agency if the surface owner is a restricted Indian, and all such amounts which may be due and pay-

able to any such Indian shall be paid to the superintendent and by him immediately remitted to the Indian entitled thereto. All sums due as royalty or damages shall be a lien on all equipment on leased premises.

§ 175.15 Homesteads.

Lessees and those acting under them shall not conduct prospecting or mining operations within or upon any homestead selection without written consent of the Secretary of the Interior.

§ 175.16 Settlement of damages.

Any person, other than a lessee or an allottee or the heirs of a deceased allottee, claiming an interest in any leased tract or in damages thereto must furnish to the officer in charge a statment in writing showing his interest, and failure to furnish such statement shall constitute a waiver of notice and estop said person from claiming any part of such damages after the same shall have been disbursed.

§ 175.17 Use of timber from restricted lands.

Lessees will not be permitted to use any timber from any Osage lands not relieved of restrictions upon alienation except under written agreement with the owner approved by the officer in charge.

§ 175.18 Assignments.

Approved leases or any interest therein may be transferred or assigned with the consent and approval of the Secretary of the Interior and not otherwise. Transfers or assignments, when so approved, shall be subject to the terms and conditions of the original leases and regulations under which such leases were approved as well as to such additional requirements as the Secretary of the Interior may prescribe. The transferee or assignee shall furnish with his transfer or assignment a satisfactory bond as prescribed in § 175.4 in connection with leases. Any attempt to transfer or assign an approved lease or any interest therein without the consent and approval of the Secretary of the Interior shall be absolutely void and shall subject the original lease to cancellation in the discretion of the secretary.

§ 175.19 Cancellation.

When a lessee makes application for the cancellation of a lease in whole or in part, all royalties or rentals due up to and including the date of the application for cancellation must be paid, and that part of the lease delivered to the lessee shall be surrendered before such application will be considered. In the event a lease is surrendered for cancellation in whole or in part, after a new lease year has been entered upon, the lessee and his surety shall be liable for the advance rentals required to be paid under the lease for that year, and no part of such rentals which may have been paid shall be refunded.

§ 175.20 Annual reports by corporate lessees.

Lessees and assignees must submit to the officer in charge on January 1, of each year and at such other times as may be required by the Secretary of the Interior, a statement containing the information called for in § 175.3(a) and (f) and also showing any changes in officers or changes in or additions to stockholders. At any time individual stockholders may be required to show to the satisfaction of the Secretary of the Interior in what companies or with what persons or firms they are interested in mining leases on the Osage Reservation and whether they hold such stock or interest for themselves or in trust.

§ 175.21 Inspection of lessees' books and records.

Lessees shall allow the agents and representatives of the lessor, or any authorized representative of the Interior Department, to enter, from time to time, upon and into all parts of the leased premises for the purpose of inspection, and their books and records showing manner of operations and persons interested, shall be open at all times for the examination of such officers of the department as shall be instructed by the Secretary of the Interior to make such examinations.

§ 175.22 Serving of notices.

Wherever notice is provided for in this part it shall be sufficient if notice has been mailed to the last known place of address of the party, and time shall begin to run with the day next ensuing after the mailing or from the date of delivery of personal notice; but where the party is outside the State of Oklahoma the officer in charge may, in his discretion, increase the time allowed.

§ 175.23 Plat of mine location.

Lessees are required, when so requested, to file a plat of their leases showing exact locations of all mines, proposed locations, power houses, etc.

§ 175.24 Forms.

Applications, leases, and other papers must be upon forms prepared by the department, and the superintendent of the Osage Indian school, Pawhuska, Okla., will furnish prospective lessees with such forms at a cost of $1 per set.

Form M. Application for mining lease, including financial showing.
Form N. Lease (except lead and zinc).
Form O. Bond.
Form P. Authority of officers to execute papers.
Form Q. Assignment.
Form R. Lease for lead and zinc.
Form S. Collective bond.

§ 175.25 Forfeiture of lease.

On the failure of any lessee or assignee to comply with any regulation or any obligation in the lease or assignment, the Secretary of the Interior may cancel and annul such lease without resorting to the courts and without any further proceeding: *Provided*, That the party or parties charged with such violation shall be first given not less than 30 days' notice to show cause why such lease should not be canceled and annulled or other order made with reference thereto.

§ 175.26 Fine; notice and hearing.

Violation of any of the terms or conditions of any lease or of the regulations pertaining thereto shall subject the lease to cancellation by the Secretary of the Interior, or the lessee to a fine of not exceeding $500 per day for each and every day the terms of the lease or of the regulations are violated, or the orders of the superintendent in reference thereto are not complied with, or to both such fine and cancellation in the discretion of the Secretary of the Interior: *Provided*, That the lessee shall be entitled to notice and hearing with respect to the terms of the lease or of the regulations violated, which hearing shall be held by the superintendent, whose findings shall be conclusive unless an appeal be taken to the Secretary of the Interior within 30 days after notice of the superintendent's decision, and the decision of the Secretary of the Interior upon appeal shall be conclusive.

§ 175.27 Changes in regulations.

The regulations in this part are subject to change or alteration at any time by the Secretary of the Interior.

§ 175.28 Location of sites for mines and buildings.

In event of disagreement between two or more mineral lessees regarding sites for the location of wells, mines, buildings, plants, etc., the same shall be determined by the superintendent after investigation and after due consideration of prior right of any lessee by reason of date of approval of lease.

§ 175.29 Prospecting; abandonment of mines.

All prospecting or mining operations or the abandonment of a well or mine shall be subject to the approval of the superintendent, and any disagreement between lessees of mineral leases regarding operations likely to result in injury to either lessee shall be determined by the superintendent, whose decision shall be final, unless an appeal is filed with the Secretary of the Interior within 30 days after notice of such decision.

§ 175.30 Lessees must appoint local representative.

Before actual drilling or development operations are commenced on leased lands, the lessee or assignee shall appoint a local or resident representative within the State, on whom the superintendent or other authorized representative of the department

may serve notice or otherwise communicate with in securing compliance with the regulations in this part and shall notify the superintendent of the name and post office address of the representative so appointed.

PART 176—LEAD AND ZINC MINING OPERATIONS AND LEASES, QUAPAW AGENCY

Sec.

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AUTHORITY: Sec. 26, 41 Stat. 1248, 50 Stat. 68.

SOURCE: 22 FR 10608, Dec. 24, 1957, unless otherwise noted.

§ 176.0 Definitions.

The following expressions, wherever used in the regulations in this part or leases thereunder, shall have the meaning designated in this section:

(a) *Superintendent.* The term "superintendent" shall mean any person in charge of the Quapaw Indian Agency, or having supervision under the direction of the Secretary of the Interior of the Indian restricted and trust allotted lands thereunder.

(b) *Allottee.* The term "allottee" shall mean any Indian to whom land has been allotted, or any Indian owner of land or interest therein as an heir or devisee.

(c) *Incompetent Indian.* The term "incompetent Indian" or "incompetent" shall mean any Indian who has been declared by the Secretary of the Interior to be incompetent to improve or manage his restricted or trust lands properly or with benefit to himself. The term shall also include any Indian who is a minor and any Indian who is a legal incompetent under the laws of the State. The term shall also apply to any Indian who is in fact incompetent, and the question of whether an Indian is competent or incompetent at the time of making a lease of his restricted or trust Indian lands is one for the Secretary of the Interior to determine.

(d) *Lessee.* The term "lessee," except where otherwise modified or limited in the regulations in this part, shall mean any person, firm, or corporation, their legal representatives, heirs, or assigns, to whom a lead and zinc mining lease has been made by or on behalf of Indians under the provisions of the regulations in this part.

(e) *Lessor.* The term "lessor," except where otherwise modified or limited in the regulations in this part, shall mean any Indian owning or having any interest in restricted or trust allotted any inherited lands under the supervision of the Quapaw Indian Agency, by or for whom a lease has been executed pursuant to the regulations in this part.

(f) *Leased lands.* The terms "leased lands," "leased premises," or "leased tract" shall mean any leased restricted or trust lands within and under jurisdiction of the Quapaw Indian Agency allotted to or inherited by an Indian.

(g) *Mining operations.* The term "mining operation" or "operations," except where otherwise modified or limited in the regulations in this part or in leases thereunder shall mean actual drilling, mining, or construction on the leased lands.

§ 176.1 No operations until lease approved.

No operations under any lease executed under the regulations in this part shall be permitted upon any restricted or trust lands allotted to or inherited by an Indian until such lease covering such tract shall be approved by the Secretary of the Interior.

§ 176.2 Local representative of lessee.

Before actual drilling or development operations are commenced on the leased lands the lessee shall appoint a local or resident representative within Ottawa County, Oklahoma, on whom the superintendent may serve notice or otherwise communicate with in securing compliance with the regulations, and shall notify the superintendent of the name and post office address of the representative so appointed. In the event of the incapacity or absence from the county of Ottawa of such designated local or resident representative, the lessee shall appoint some person to serve in his stead, and in the absence of such representative or of notice of the appointment of a substitute any employee of the lessee upon the leased premises, or the contractor, or other person in charge of mining operations thereon shall be considered the representative of the lessee for the purpose of service of orders or notices as provided in this part, and service upon any employee, contractor, or other person shall be deemed service on the lessee. Wherever a notice is provided for in the regulations in this part or in the lease from it shall be deemed sufficient if notice has been mailed to the last known address of the lessee or his local or resident representatives, and time shall begin to run with the day next ensuing after the mailing, or from date of delivery of personal notice.

§ 176.3 Manner and time of royalty payments.

All royalties belonging to the lessor shall be paid to the superintendent of the Quapaw Agency at Miami, Okla., or such other official as the Secretary of the Interior may designate, for the benefit of the lessor, not later than 15 days from the 1st of each month for ore and concentrates sold during the preceding month.

§ 176.4 Leases to be sold at public auction.

Except as otherwise provided in the regulations in this part, no lead and zinc mining lease under this part of restricted or trust allotted and inherited Indian lands within and under the Quapaw Indian Agency shall be made except to the highest responsible bidder at public auction.

§ 176.5 Royalty rates.

(a) In leases offered for sale at public auction under the regulations in this part the royalty to be paid by the lessee shall be stipulated at a fixed percent of the gross proceeds of all lead and zinc ores and concentrates extracted from the leased premises, the royalty to be computed and based upon each sale of ore or concentrates separately, the rate of royalty to be determined and fixed by the Secretary of the Interior in the case of each lease prior to the offering of such lease for sale. Subject to the right of the Secretary of the Interior to reject any and all bids, leases offered for sale at public auction shall be awarded in each case to the responsible bidder submitting the highest bonus offer.

(b) In leases not offered for sale at public auction but otherwise made and entered into under the provisions of the regulations in this part the royalty stipulated and fixed therein shall be such as may be determined by the Secretary of the Interior or as may be agreed upon in each case, subject to the approval of the Secretary of the Interior.

(c) It shall be further provided, however, that said sale-price basis for the determination of the rates and amount of royalty shall not be less than the highest and best obtainable market price of the lead and zinc ores and concentrates at the usual and customary place of disposing of such ores and concentrates at the time of sale: *Provided, however,* That the right is reserved to the Secretary of the Interior to determine and declare such market price if it is deemed necessary for him to do so for the protection of the interests of the Indian lessor: *And provided further,* That the right is re-

served to the Secretary of the Interior on behalf of the Indian lessors to reserve at any time it shall be deemed to be to the best interests of the Indian lessors and upon due notice to the lessee, the royalty share of the gross production of the ore and concentrates and upon such notice that the royalty share of such production shall be stored and not sold, the lessee shall be required to store, free of charge to the Indian lessors in the ore bins of said lessee, said royalty shares of the gross production of ore and concentrates, provided that the lessee may not be required to store ore or concentrates for the lessor in amounts greater than one-third of his bin capacity or for a period longer than 6 months.

§ 176.6 Applications for leases; consent of Indian owners.

(a) Applications or requests by the Indian owners of restricted or trust land, or by others, that such land be leased or offered for lease for lead and zinc mining purposes should be addressed to the Secretary of the Interior and submitted through the superintendent of the Quapaw Indian Agency. Upon receipt of such applications or requests, the superintendent shall give consideration thereto and forward the same to the Commissioner of Indian Affairs with his report and recommendation.

(b) In no instance will a new lease be executed and delivered (or advertised for sale to the highest bidder) unless the Indian owner thereof, if an adult who has not been specifically found by the Secretary of the Interior to be personally incompetent to transact ordinary business affairs, has agreed to the terms of said lease or the terms under which said lease is advertised for lease, except in cases where the land is owned by several co-tenants, and, in such cases, no such lease shall be given or advertised for sale unless the co-owners or a majority in interest, if adults, and not specifically declared incompetent, have first consented thereto: *Provided*, That in the event the majority in interest is owned by minors, or adults specifically found to be incompetent, then and in that event, the Secretary of the Interior reserves the right to lease the entire tract if, in his opinion, such leasing will inure to the best interest of the restricted Indian owners.

§ 176.7 Advertisement of sale of leases.

Upon authority being granted by the Secretary of the Interior to the superintendent to offer for sale at public auction a lead and zinc mining lease of any tract or tracts of restricted or trust allotted and inherited Indian lands, the superintendent shall cause a notice to be published once a week for at least 4 weeks in some designated newspaper of general circulation in the county in which the land is located, setting forth that upon a certain day, which shall be not less than 30 days from the first publication of such notice and at a place to be named in the notice, the superintendent or other duly authorized representatives of the Secretary of the Interior will offer for sale at public auction a lead and zinc mining lease of such lands to the highest and best bidder, subject to the rules and regulations prescribed by the Secretary of the Interior, notice to be in such form as may be prescribed by the Secretary of the Interior.

§ 176.8 Submission of bids.

At the time of public auction bidders may submit their bids in person or by authorized agents, but in the latter case the bids must be accompanied by power of attorney duly executed by the real party or person in interest. Sealed bids may be submitted by mail or otherwise to the superintendent at his office at Miami, Okla., or delivered to him at the place set for the sale at any time prior to the hour fixed for offering the lease for sale. At the time and place of the public auction and before receiving the public bids the officer in charge shall announce the amounts and terms of all sealed bids received by him and the names of the bidders. The persons present, including those, if any, who may have theretofore submitted sealed bids, shall then be allowed to offer public bids. Bids must contain the offer of the stipulated and fixed royalty (see § 176.5 as to royalty) and, in addition thereto, the offer of a bonus payable as follows: 25 percent at time of sale

and the balance before or at time of execution of the lease contract. Bidders shall be required to submit with their bids a draft or certified check payable to the order of the superintendent covering the advance rental for the first year on the proposed leasehold and 25 percent of the amount of the bonus offered. The superintendent shall, in each case, determine the highest and best bid, said determination, however, to be subject to the approval of the Secretary of the Interior. Upon approval by the Secretary of the Interior of the award, the successful bidder shall, within 30 days from notice thereof, enter into and execute the lease contract in accordance with said bid and the regulations in this part. The lease so executed shall be subject to the approval of the Secretary of the Interior and may be accepted or rejected by him when submitted for his approval. The right is reserved to the Secretary of the Interior, in the event of the rejection of such lease, to authorize and instruct the superintendent to accept the offer of some competitive bidder or to readvertise the land for lease. The report of the superintendent to the Commissioner of Indian Affairs relative to the auction sale shall contain full information as to all bids received for the lease rights on the land. If any person or party fails or refuses to execute a lease after being declared the highest bidder or after being awarded such lease, the amount tendered with his bid shall be forfeited to the superintendent for the benefit of the owner of the land.

§ 176.9 Execution of leases.

Whenever a lease award to a proposed lessee has been approved by the Secretary of the Interior, as provided in §§ 176.7 and 176.8, the lease contract shall be executed by the Indian owner of the land, if he be an adult and not incompetent as defined in § 76.0(c). Before any lease is entered into by the Indian owners or is approved by the Secretary of the Interior, all the adult and competent owners or co-owners of the tract of land which it is proposed to lease, shall be furnished by the Bureau such geological reports as may be available or that can be secured from the representative of the Geological Survey showing the estimated mineral reserves on said property, the estimated reasonable value of such property for mining purposes, and such other data as might reasonably be necessary to fully advise the owners of said property of the then present status and mining value of their lands. If the Quapaw or other Indian owner of the land is a minor, or is otherwise an incompetent as defined in the regulations in this part, the lease contract shall be executed by the superintendent for and on behalf of such minor or such incompetent. The leases executed, either by the Indian owner of the land or by the superintendent in his behalf, shall be subject to the approval of the Secretary of the Interior and shall be effective only upon such approval.

§ 176.10 Renewal of leases on developed lands.

(a) In cases where the lands have heretofore been leased, and lead and zinc ores have been discovered hereon, and it shall appear to the Secretary of the Interior to be advisable and to the best interests of the Indian owners of the lands that the terms of the existing lease or leases be extended or that a new lease or leases for an additional period of time, or that a new lease or leases to take effect upon the expiration of present valid leases, should, upon application therefor, be granted to either the present lessees or to parties holding under assignments, subleases, or mining contracts, from such present lessees, or to parties who have expended capital in lead and zinc mining operation and development of the land under such leases, assignments, subleases, or mining contracts, a new lease or leases or contract of extension or existing lease or leases as may be authorized by the Secretary of the Interior may be entered into with the proper party or parties as may be determined by said Secretary of the Interior, and such new lease or leases or contract of extension of existing lease or leases shall be executed subject to the regulations in this part by and between the Indian owner of the land, if an adult and not incompetent as defined in § 176.0 (c), and said

proper party or parties. If the Quapaw or other Indian owner of the land is a minor or an otherwise incompetent as defined in § 176.0 (c), the superintendent shall execute the new lease or leases or contract of extension of existing lease or leases for and on behalf of said Indian minor or incompetent. Said new leases or contracts of extension of old leases, whether executed by the Indian owner of the land or by the superintendent for and in his behalf, shall be subject to the approval of the Secretary of the Interior and shall become effective only upon such approval. No offering for sale at public auction or advertisement of sale will be necessary in reference to contracts of extension of leases, or to leases entered into under this section, as above provided, but such lease or contract shall be upon such terms as to bonus and royalty as may be determined and fixed in each case by the Secretary of the Interior under the provisions of § 176.5. The approval by the Secretary of the Interior of new leases or of the contracts of extension of old leases shall be conclusive as to the validity of said leases, or contracts of extension of leases, the manner and method of negotiating the same, and the execution thereof. If, however, in any case where lands have heretofore been leased and lead and zinc ores have been discovered thereon, it shall appear to the Secretary of the Interior that the extension of the existing lease or leases or the granting of new leases to the present lessees, or to the persons or parties holding under said lessees by assignment, sublease, or mining contract, would not be to the best interests of the Indian owners of the land, the Secretary of the Interior may, at the expiration, cancellation, or forfeiture of the existing lease, cause the mining lease rights on said land to be offered for sale at public auction to the highest bidder. If the lead and zinc mining lease on said land be offered for sale at public auction, the same procedure shall be followed as provided in §§ 176.7-176.9.

(b) Applications under the provision of this section for a lease or extension of lease or for the approval of such lease or extension of lease will not be received or considered prior to the period of 1 year next preceding the date of the expiration of such valid existing lease or leases as may be on the land covered by such application.

(c) Applications under the provisions of this section for a lease or extension of lease or for the approval of such lease or extension of lease shall be filed with the superintendent of the Quapaw Agency at any time within the period of 1 year next preceding the date of the expiration of such valid existing lease or leases as may be on the land covered by such application, and if the records of or papers in the office of said superintendent or the records of the county court of Ottawa County, Okla., indicate that there are any prior existing leases, subleases, assignments of leases or mining contracts covering any of the land applied for, the superintendent shall notify all persons having or claiming any rights or interest in or under said prior existing leases, subleases, assignments of leases, or mining contract concerning said application for lease or extension of lease, and that they will be allowed 10 days in which to file with the superintendent any objection they may have to the allowance of the application or to the approval of the new lease or extension of existing lease. If objection or protest is made by any owner of the land or by any person claiming rights or interests in or under existing lease, sublease, assignment of lease, or mining contract, a reasonable time, not exceeding 20 days, shall be allowed them in which to file their statement or brief in support of their protest or objection, and a reasonable further time not exceeding 10 days shall be allowed the applicant for new lease or for extension of existing lease to reply in support of the application. In case of contest, hearings may be had if deemed necessary by the Secretary of the Interior or his representative. The application and papers in each case shall be forwarded by the superintendent of the Quapaw Indian Agency to the Commissioner of Indian Affairs with his report and recommendation in regard thereto.

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§ 176.11 New leases where prior leases have been forfeited or abandoned.

In cases where the lands have heretofore been leased and lead and zinc ores have been discovered but the mines and mining operations have been abandoned and the leases have been canceled or forfeited or have expired, special arrangements in the matter of the leasing and mining of said lands may be made provided the consent thereto of the Secretary of the Interior be first obtained. Applications containing special offers as to the terms and conditions may be considered by the Secretary of the Interior and the leasing of said lands may be made upon such special terms and conditions as the Secretary of the Interior may in each case deem to be for the best interests of the Indian owners of the land. If, however, in any case, it shall appear to the Secretary of the Interior that the granting of such lease would not be to the best interest of the Indian owners of the land, the Secretary of the Interior may cause the mining lease rights on said land to be offered for sale at public auction to the highest bidder. If the lead and zinc mining lease on said land be offered for sale at public auction, the same procedure shall be followed as provided in §§ 176.7–176.9.

§ 176.12 Advertising costs.

All advertising costs, publication fees, expenses incurred for abstracts of lease title, and other expenses incurred in connection with the advertising and sale of leases and in connection with the execution of lease contracts shall be borne by the lessee. In the event a lease of the land is offered to the highest bidder and he fails or refuses to execute such lease when duly notified and as required by or under the regulations in this part, and no other bid is accepted, such costs, fees, and expenses shall be paid from such money as he may have paid with his bid. If no bid is tendered after a tract is advertised, or if all bids are refused, said items of expenses shall be charged to the Indian owner of the land and be paid by him or be paid by the superintendent from any funds held by such superintendent to the credit of such Indian owner of the land.

§ 176.13 Bond.

Every mineral lease made and entered into under the regulations in this part, by an Indian or by the superintendent as his representative or in his behalf, must be accompanied by a surety bond, executed by the lessee and by a responsible surety company or two or more satisfactory sureties, guaranteeing the payment of all deferred installments of bonus and the payment of all specified royalties and rentals and the performance of all covenants and agreements undertaken by the lessee. Such bonds, unless authorized by the Secretary of the Interior or his authorized representative, with the consent of the Indian landowner, shall be not less than the following amounts:

For less than 80 acres—$2,500
For 80 acres and less than 120 acres—3,500
For 120 acres or more—5,000

Provided, however, That the lessee may, in lieu of such surety bond and upon execution of a proper penal bond to the United States in the sum prescribed and a proper power of attorney to the Secretary of the Interior, submit therewith United States bonds or notes in the aggregate sum prescribed as security for the carrying out of the terms, conditions, and provisions of the lease: *Provided further,* That a lessee may file in lieu of such individual lease bonds, one bond in a sum to be fixed by the Secretary of the Interior covering all leases to which he is or may become a party. The right is specifically reserved to the Secretary of the Interior to require an increase of the amount of any bond above the sum named in any particular case where he deems it necessary to require such increased bond.

[26 FR 164, Jan. 10, 1961]

§ 176.14 Payments to be made to superintendent.

No bonus, rents, royalties, nor other payments accruing under any mineral lease executed in accordance with or subject to the regulations in this part and approved by the Secretary of the Interior shall be paid direct to the

Indian lessor; but all such bonus, rents, royalties, and other payments accruing under any such lease shall be paid to the superintendent for the benefit of the Indian lessors, to be deposited by that officer to the credit of the superintendent in some bank designated for the deposit of individual Indian moneys.

§ 176.15 Leases to be accompanied by Form D.

Lead and zinc leases should be accompanied, when filed, with application for approval (Form D)[1] made under oath, and said application shall set forth the information therein required.

§ 176.16 Requirements of corporate lessees.

(a) When the lessee is a corporation, its first application must be accompanied by a sworn statement of its proper officers showing:

(1) The total number of shares of the capital stock actually issued and, specifically, the amount of cash paid into the treasury on each share sold; or, if paid in property, state kind, quantity, and value of the same paid per share.

(2) Of the stock sold how much per share remains unpaid and subject to assessment.

(3) How much cash the company has in its treasury and elsewhere and from what source it was received.

(4) What property, exclusive of cash, is owned by the company and its value.

(5) What the total indebtedness of the company is, and, specifically, the nature of its obligations.

(b) Subsequent applications of the corporation should show briefly the aggregate amounts of assets and liabilities.

§ 176.17 Additional information required.

Corporations, with their first application, must file one certified copy of articles of incorporation and, if a foreign corporation, evidence showing compliance with local corporation laws; also a list showing officers and stockholders, with post-office addresses and number of shares held by each. Statements of any changes of officers or any changes or additions of stockholders must be furnished to the Indian superintendent on January 1 of each year and at any time when requested. The right is reserved to the Secretary of the Interior to require of individual stockholders affidavits setting forth in what companies or with what persons or firms they are interested in lead and zinc mining leases, or land under the jurisdiction of the Quapaw Indian Agency, and whether they hold such stock for themselves or in trust. Evidence must also be given in a single affidavit (Form I) by the Secretary of the company or by the president of said company, showing authority of the officers of the company to execute the lease, bond, and other papers.

§ 176.18 Term of leases.

The term of lead and zinc mining leases executed pursuant to acts of Congress and under the regulations in this part shall be for such period of time as may be determined in each case by the Secretary of the Interior, but in no case shall a lease be made to extend beyond the restriction or trust period on the lands covered by such lease.

§ 176.19 Forms.[2]

Application, leases, and other papers must be upon forms prescribed by the Secretary of the Interior. Except as may be otherwise provided and required by the Secretary of the Interior, the leases and other papers required under the regulations in this part shall be in conformity with the forms designated, respectively, as follows:

Form A. Lease of Quapaw Indian land.
Form B. For lease of Indian land other than Quapaw.
Form C. Application by Indian.
Form D. Application for approval of lease.
Form E. Affidavit of lessor (or of superintendent acting for him) and affidavit of lessee.
Form F. Surety bond.

[1] For further information concerning forms, see § 176.19.

[2] Forms may be obtained from the Commissioner of Indian Affairs, Washington, D.C.

Form G. Affidavit of surety on personal bond.

Form H. Certificate as to sufficiency of surety on personal bond.

Form I. Affidavit as to authority of officers of corporation to execute lease and other papers.

Form J. Penal bond (in lieu of surety bond), and accompanying power of attorney.

Form K. Assignment of lead and zinc lease.

§ 176.20 Assignment.

Leases granted or approved under the regulations in this part may be assigned and the leased premises may be subleased or sublet, but only with the consent and authority of the Secretary of the Interior and subject to his approval as to the terms and conditions of such assignments, sublease, and subletting contracts and not otherwise, and provided also that the proposed assignees, sublessee, or sublettee shall be qualified to hold such lease under the regulations in this part and shall furnish such bond as may be required by the Secretary of the Interior, such bond to be with responsible surety to the satisfaction of the Secretary of the Interior and conditioned for the faithful performance of the covenants and conditions of the lease. Upon the filing with the Indian agent of such assignment, financial statement, and bond, the said agent shall at once give notice in writing to all restricted Indian owners of said land, advising them of said proposed assignment, and that if they have any bona fide objections to same, such objections must be filed in writing within 10 days from the date of said notice.

§ 176.21 Payment of gross production tax on lead and zinc.

The superintendent of the Quapaw Indian Agency is hereby authorized and directed to pay at the appropriate times, from the respective individual Indian funds held under his supervision, such gross production tax due the State on production of lead and zinc from restricted lands under his jurisdiction as may be properly assessed under provisions of law against the royalty interests of the respective Indian owners in the mineral produced from their lands.

§ 176.22 Operations.

(a) All shafts shall be securely cribbed to a point at least 8 inches above the immediate surrounding surface and cribbing shall be maintained in good condition during the life of the mining lease: *Provided, however,* That at any time shafts may be permanently sealed by a reinforced concrete slab after first obtaining the written approval of the duly authorized representative of the Department of the Interior. The slab shall be so placed as to prevent caving of the ground around the shaft collar.

(b) All shafts, prior to the expiration, surrender, or upon cancellation of the mining lease or abandonment of the property, shall be permanently sealed so as to prevent the caving of the ground around the shaft collar: *Provided, however,* That this requirement may be waived after first obtaining the written consent of the duly authorized representative of the Department of the Interior.

(c) All shaft entrances not permanently sealed shall be so fenced, boxed, or covered as to prevent persons or animals from falling into the mine when the shaft is not in actual use, and such fencing, boxing, or covering shall be maintained in good condition during the life of the mining lease.

(d) All shafts where hoisting is done shall be boxed or fenced on three sides and the fourth side equipped with a gate which shall be kept closed when access to the shaft is not necessary.

(e) All churn drill holes shall be securely plugged to the surface unless used for ventilation or other mining purposes, in which case they shall be cased or otherwise prevented from caving or becoming a hazard to persons or animals. If cased, the casing shall extend 4 feet above the collar of the hole.

§ 176.23 Cooperation between superintendent and district mining supervisor.

(a) The district mining supervisor of the Miami field office, Geological Survey, directly or through his assistants, shall receive from lessees for the superintendent, all notices, reports, drill logs, maps, and records, and all other information relating to

mining operations required by said regulations to be submitted by lessees, and shall maintain a file thereof for the superintendent.

(b) The files of the Geological Survey supervisor relating to lead and zinc leases of Quapaw Indian lands shall be at all times available for inspection and use by authorized employees of the Bureau of Indian Affairs, and the employees of the Geological Survey assigned to work relating to Indian lands shall furnish to authorized employees of the Bureau of Indian Affairs such information and technical advice as may be necessary or appropriate to the most efficient cooperation in the conduct of the work assigned to the two bureaus. Likewise, similar facilities and service shall be provided for the benefit of the authorized employees of the Geological Survey by the Bureau of Indian Affairs.

(c) No orders of any kind will be issued by Geological Survey representatives to any Indian, but such representatives shall have full authority to issue and amend orders to operators relative to production and operations: i.e., the supervision of all operations, including safety and efficiency, health and sanitation, and prevention of material or economic waste, such orders to be prepared with the advice of the local representative of the Bureau of Indian Affairs.

CROSS REFERENCE: For regulations of the Geological Survey, see 30 CFR Chapter II.

§ 176.23a Suspension of operations and production on leases for minerals other than oil and gas.

The provisions of § 172.15a of this subchapter are applicable to leases under this part.

[24 FR 9511, Nov. 26, 1959]

§ 176.24 Books and accounts.

(a) The lessee shall maintain books in which shall be kept a correct account of all ore and rock mined on the tract, of all ore put through the mill, of all lead and zinc concentrates produced, and of all ore and concentrates sold and to whom sold, the weight, assay value, moisture content, base price, dates, penalties, and price received, and the percentage of lead and zinc recovered. A correct statement of the same for each month shall be furnished the office of the district mining supervisor pursuant to § 176.23 not later than 15 days after the first of each month for the preceding month, together with a certificate from the smelter showing the unit price paid for the mineral purchased and the amount of ore and concentrates purchased during the month from said land.

(b) An audit of the lessee's accounts and books shall be made semiannually, or at such other times as may be directed by the Secretary of the Interior, by certified public accountants, approved by the Secretary, and at the expense of the lessee. The lessee shall furnish free of cost a copy of such semiannual or other audit, through the office of the district mining supervisor pursuant to § 176.23, within 30 days after the completion of each auditing.

§ 176.25 Other minerals and deep-lying lead and zinc minerals.

Except as provided in § 176.6(b), leases on Quapaw Indian lands, for mining minerals other than lead and zinc and for lead and zinc and associated minerals below the horizon of the rock stratum known as the Reed Springs Formation, shall be made pursuant to the provisions of Part 172 of this subchapter.

[26 FR 1910, Mar. 4, 1961]

PART 177—SURFACE EXPLORATION, MINING, AND RECLAMATION OF LANDS

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Subpart A—General Provisions

AUTHORITY: 34 Stat. 539, 35 Stat. 312; 25 U.S.C 355 NT; 35 Stat 781; 25 U.S.C. 396; Sec. 1, 49 Stat. 1250; 25 U.S.C. 473a; 49 Stat. 1967, 25 U.S.C. 501, 502; 52 Stat. 347, 25 U.S.C. 396a-f; 5 U.S.C. 301.

SOURCE: 34 FR 813, Jan. 18, 1969, unless otherwise noted. Redesignated at 42 FR 63394, Dec. 16, 1977.

§ 177.1 Purpose.

It is the policy of this Department to encourage the development of the mineral resources underlying Indian lands where mining is authorized. However, interest of the Indian owners and the public at large requires that, with respect to the exploration for, and the surface mining of, such minerals, adequate measures be taken to avoid, minimize, or correct damage to the environment—land, water, and air—and to avoid, minimize, or correct hazards to the public health and safety. The regulations in this part prescribe procedures to that end.

§ 177.2 Scope.

(a) Except as provided in paragraph (b) of this section, the regulations in this part provide for the protection and conservation of nonmineral resources during operations for the discovery, development, surface mining, and onsite processing of minerals under permits or leases issued pursuant to statutes pertaining to Indian lands including but not limited to the following statutes or amendments thereto:

The Act of June 28, 1906 (34 Stat. 539);
The Act of May 27, 1908 (35 Stat. 312);
The Act of March 3, 1909 (35 Stat. 781, 25 U.S.C. 396);
The Act of May 1, 1936 (49 Stat. 1250);
The Act of June 26, 1936 (49 Stat. 1967);
The Act of May 11, 1939 (52 Stat. 347, 25 U.S.C. 396a-f, and 5 U.S.C. 301).

(b) The regulations in this part do not cover the exploration for oil and gas or the issuance of leases, or operations thereunder, nor minerals underlying lands, the surface of which is not owned by the owner of the minerals.

(c) The regulations in this part shall apply only to permits or leases issued subsequent to the date on which these regulations become effective and which are subject to the approval of the Secretary of the Interior or his designated representative.

§ 177.3 Definitions.

As used in the regulations in the part:

(a) "Superintendent" means the superintendent or other officer of the Bureau of Indian Affairs having jurisdiction under delegated authority, over the lands involved.

(b) "Mining supervisor" means the Regional Mining Supervisor, or his authorized representative, of the Geological Survey authorized as provided in 30 CFR 211.3 and 231.2 to supervise operations on the land covered by a permit or lease.

(c) "Overburden" means all the earth and other materials which lie above a natural deposit of minerals and such earth and other materials after removal from their natural state in the process of mining.

(d) "Area of land to be affected" or "area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden or waste is to be or has been deposited, and includes all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to an operation and for haulage.

(e) "Operation" means all of the premises, facilities, roads, and equipment used in the process of determining the location, composition or quality of a mineral deposit, or in developing, extracting, or onsite processing of a mineral deposit in a designated area.

(f) "Method of operation" means the method or manner by which a cut or open pit is made, the overburden is placed or handled, water is controlled or affected and other acts performed by the operator in the process of exploring or uncovering and removing or onsite processing of a mineral deposit.

(g) "Holder" or "operator" means the permittee or lessee designated in a permit or lease.

(h) "Reclamation" means measures undertaken to bring about the necessary reconditioning or restoration of land or water that has been affected by exploration or mineral development, mining or onsite processing operations, and waste disposal, in ways which will prevent or control onsite and offsite damage to the environment.

§ 177.4 Technical examination of prospective surface exploration and mining operations.

(a) (1) In connection with an application for a permit or lease, the superintendent shall make, or cause to be made, a technical examination of the prospective effects of the proposed exploration or surface mining operations upon the environment. The technical examination shall take into consideration the need for the preservation and protection of other resources, including cultural, recreational, scenic, historic, and ecological values; and control of erosion, flooding, and pollution of water; the isolation of toxic materials; the prevention of air pollution; the reclamation by revegetation, replacement of soil or by other means, of lands affected by the exploration or mining operations; the prevention of slides; the protection of fish and wildlife and their habitat; and the prevention of hazards to public health and safety.

(2) A technical examination of an area should be made with the recognition that actual potential mining sites and mining operations vary widely with respect to topography, climate, surrounding land uses, proximity to densely used areas, and other environmental influences and that mining and reclamation requirements should provide sufficient flexibility to permit adjustment to local conditions.

(b) Based upon the technical examination, the superintendent shall formulate the general requirements which the applicant must meet for the protection of nonmineral resources during the conduct of exploration or mining operations and for the reclamation of lands or waters affected by exploration or mining operations. The general requirements shall be made known in writing to the applicant before the issuance of a permit or lease and upon acceptance thereof by the applicant, shall be incorporated in the permit or lease.

(c) In each instance in which an application is made the mining supervisor shall participate in the technical examination and in the formulation of the general requirements.

(d) The superintendent may prohibit or otherwise restrict operations on any part of an area whenever it is determined that such part of the area described in an application for a permit or lease is such that previous experience under similar conditions has shown that operations cannot feasibly be conducted by any known methods or measures to avoid—

(1) Rock or landslides which would be a hazard to human lives or endanger or destroy private or public property; or

(2) Substantial deposition of sediment and silt into streams, lakes, reservoirs; or

(3) A lowering of water quality below standards established by the appropriate State water pollution control agency, or by the Secretary of the Interior, or his authorized representative; or

(4) A lowering of the quality of waters whose quality exceeds that required by the established standards—

unless and until it has been affirmatively demonstrated to the Secretary of the Interior, or his authorized representative, that such lowering of quality is necessary to economic and social development and will not pre-

clude any assigned uses made of such waters; or

(5) The destruction of key wildlife habitat or important scenic, historical, or other natural or cultural features.

(e) If, on the basis of a technical examination, the superintendent determines that there is a likelihood that there will be a lowering of water quality as described in paragraph (d) (3) and (4) of this section caused by the operation, no lease or permit shall be issued until after consultation with the Federal Water Pollution Control Administration and a finding by the Administration that the proposed operation would not be in violation of the Federal Water Pollution Control Act, as amended (33 U.S.C. section 466 et seq.), or of Executive Order No. 11288 (31 FR 9261). Where a permit or lease is involved the Superintendent's determination shall be made in consultation with the mining supervisor.

§ 177.5 Basis for denial of a permit or lease.

An application for a permit or lease to conduct exploratory or mining operations may be denied any applicant who has forfeited a required bond because of failure to comply with a mining plan. However, a permit or lease may not be denied an applicant because of the forfeiture of a bond if the lands disturbed under his previous permit or lease have subsequently been reclaimed without cost to the lessor or the United States.

§ 177.6 Approval of exploration plan.

(a) Before commencing any surface disturbing operations to explore, test or prospect for minerals, the operator shall file with the mining supervisor a plan for the proposed exploration operations. The mining supervisor shall consult with the superintendent with respect to the surface protection and reclamation aspects before approving said plan.

(b) Depending upon the size and nature of the operation and the requirements established pursuant to § 177.4 the mining supervisor may require that the exploration plan submitted by the operator include any or all of the following:

(1) A description of the area within which exploration is to be conducted;

(2) Two copies of a suitable map or aerial photograph showing topographic, cultural and drainage features;

(3) A statement of proposed exploration methods; i.e., drilling, trenching, etc., and the location of primary support roads and facilities;

(4) A description of measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, damage to fish and wildlife or other natural resources, and hazards to public health and safety both during and upon abandonment of exploration activities.

(c) The mining supervisor shall promptly review the exploration plan submitted to him by the operator and shall indicate to the operator any changes, additions, or amendments necessary to meet the requirements formulated pursuant to § 177.4, the provisions of these regulations, and the terms of the permit.

(d) The operator shall comply with the provisions of an approved exploration plan. The mining supervisor may, with respect to such a plan, exercise the authority provided by paragraphs (f) and (g) of § 177.7 respecting a mining plan.

§ 177.7 Approval of mining plan.

(a) Before surface mining operations may commence under any permit or lease, the operator must file a mining plan with the mining supervisor and obtain his approval of the plan. The mining supervisor shall consult with the superintendent with respect to the surface protection and reclamation aspects before approving said plan.

(b) Depending on the size and nature of the operation and the requirements established pursuant to § 177.4 the mining supervisor may require that the mining plan submitted by the operator include any or all of the following:

(1) A description of the location and area to be affected by the operations;

(2) Two copies of a suitable map, or aerial photograph showing the topography, the area covered by the permit or lease, the name and location of major topographic and cultural fea-

tures, and the drainage plan away from the area affected;

(3) A statement of proposed methods of operating, including a description of proposed roads or vehicular trails; the size and location of structures and facilities to be built;

(4) An estimate of the quantity of water to be used and pollutants that are expected to enter any receiving waters;

(5) A design for the necessary impoundment, treatment or control of all runoff water and drainage from workings so as to reduce soil erosion and sedimentation and to prevent the pollution of receiving waters;

(6) A description of measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, damage to fish and wildlife, and hazards to public health and safety; and

(7) A statement of the proposed manner and time of performance of work to reclaim areas disturbed by the holder's operation.

(c) In those instances in which the permit or lease requires the revegetation of an area of land to be affected, the mining plan shall show:

(1) Proposed methods of preparation and fertilizing the soil prior to replanting;

(2) Types and mixtures of shrubs, trees, or tree seedlings, grasses or legumes to be planted; and

(3) Types and methods of planting, including the amount of grasses or legumes per acre, or the number and spacing of trees, or tree seedlings, or combinations of grasses and trees.

(d) In those instances in which the permit or lease requires regrading and backfilling, the mining plan shall show the proposed methods and the timing of grading and backfilling of areas of land to be affected by the operation.

(e) The mining supervisor shall review the mining plan submitted to him by the operator and shall promptly indicate to the operator any changes, additions, or amendments necessary to meet the requirements formulated pursuant to § 177.4, the provisions of these regulations and the terms of the permit or lease. The operator shall comply with the provisions of an approved mining plan.

(f) A mining plan may be changed by mutual consent of the mining supervisor and the operator at any time to adjust to changed conditions or to correct any oversight. To obtain approval of a change or supplemental plan, the operator shall submit a written statement of the proposed changes or supplement and the justification for the changes proposed. The mining supervisor shall promptly notify the operator that he consents to the proposed changes or supplement, or in the event he does not consent, he shall specify the modifications thereto under which the proposed changes or supplement would be acceptable. After mutual acceptance of a change of a plan, the operator shall not depart therefrom without further approval.

(g) If circumstances warrant or if development of a mining plan for the entire operation is dependent upon unknown factors which cannot or will not be determined except during the progress of the operations, a partial plan may be approved and supplemented from time to time. The operator shall not, however, perform any operation except under an approved plan.

§ 177.8 Performance bond.

(a) Upon approval of an exploration plan or mining plan, the operator shall be required to file a suitable performance bond of not less than $2,000 with satisfactory surety, payable to the Secretary of the Interior, and the bond shall be conditioned upon the faithful compliance with applicable regulations, the terms and conditions of the permit, lease, or contract, and the exploration or mining plan as approved, amended or supplemented. The bond shall be in an amount sufficient to satisfy the reclamation requirements established pursuant to an approved exploration or mining plan, or an approved partial or supplemental plan. In determining the amount of the bond consideration shall be given to the character and nature of the reclamation requirements and the estimated costs of reclamation in the event that the operator forfeits his performance bond. In lieu of a surety bond an operator may elect to deposit cash or negotiable bonds of the U.S. govern-

ment. The cash deposit or the market value of such securities shall be equal at least to the required sum of the bond.

(b) In a particular instance where the circumstances are such as to warrant an exception, the amount of the bond for a particular operation may be reduced to less than the required minimum of $2,000.

(c) The superintendent shall set the amount of a bond and take the necessary action for an increase or for a complete or partial release of a bond. He shall take action with respect to bonds for leases or permits only after consultation with the mining supervisor.

§ 177.9 Reports.

(a) Within 30 days after the end of each calendar year, or if operations cease before the end of a calendar year, within 30 days after the cessation of operations, the operator shall submit an operations report to the mining supervisor containing the following information:

(1) An identification of the permit or lease and the location of the operation.

(2) A description of the operations performed during the period of time for which the report is filed.

(3) An identification of the area of land affected by the operations and a description of the manner in which the land has been affected.

(4) A statement as to the number of acres disturbed by the operations and the number of acres which were reclaimed during the period of time.

(5) A description of the method utilized for reclamation and the results thereof.

(6) A statement and description of reclamation work remaining to be done.

(b) Upon completion of such grading and backfilling as may be required by an approved exploration or mining plan, the operator shall make a report thereon to the mining supervisor and request inspection for approval. Whenever it is determined by such inspection that backfilling and grading have been carried out in accordance with the established requirements and approved exploration or mining plan, the superintendent shall issue a release of an appropriate amount of the performance bond for the area graded and backfilled. Appropriate amounts of the bond shall be retained to assure that satisfactory planting, if required, is carried out.

(c) (1) Whenever planting is required by an approved exploration or mining plan, the operator shall file a report with the superintendent whenever such planting is completed. The report shall—

(i) Identify the permit or lease;

(ii) Show the type of planting or seeding, including mixtures and amounts;

(iii) Show the date of planting or seeding;

(iv) Identify or describe the areas of the lands which have been planted;

(v) Contain such other information as may be relevant.

(2) The superintendent, as soon as possible after the completion of the first full growing season, shall make an inspection and evaluation of the vegetative cover and planting to determine if a satisfactory growth has been established.

(3) If it is determined that a satisfactory vegetative cover has been established and is likely to continue to grow, any remaining portion of the surety bond may be released if all requirements have been met by the operator.

(d) (1) Not less than 30 days prior to cessation or abandonment of operations, the operator shall report to the mining supervisor his intention to cease or abandon operations, together with a statement of the exact number of acres of land affected by his operations, the extent of reclamation accomplished and other relevant information.

(2) Upon receipt of such report an inspection shall be made to determine whether operations have been carried out in accordance with the approved exploration or mining plan.

§ 177.10 Inspection: Notice of noncompliance: Revocation.

(a) The mining supervisor and superintendent shall have the right to enter upon the lands under a permit or lease, at any reasonable time, for the

purpose of inspection or investigation to determine whether the terms and conditions of the permit or lease and the requirements of the exploration or mining plan have been complied with.

(b) If the mining supervisor determines that an operator has failed to comply with the terms and conditions of a permit or lease, or with the requirements of an exploration or mining plan, or with the provisions of applicable regulations, the superintendent shall serve a notice of noncompliance upon the operator by delivery in person to him or his agent or by certified or registered mail addressed to the operator at his last known address.

(c) A notice of noncompliance shall specify in what respects the operator has failed to comply with the terms and conditions of a permit or lease or the requirements of an exploration or mining plan, or the provisions of applicable regulations, and shall specify the action which must be taken to correct the noncompliance and the time limits within which such action must be taken.

(d) Failure of the operator to take action in accordance with the notice of noncompliance shall be grounds for suspension by the mining supervisor of operations or for the initiation of action for the cancellation of the permit or lease and for forfeiture of the surety bond required under § 177.8.

§ 177.11 Appeals.

An applicant, permittee, lessee, or lessor aggrieved by a decision or order of a mining supervisor or superintendent may appeal such decision or order. An appeal from a decision or order of a superintendent shall be made pursuant to 25 CFR Part 2. An appeal from a decision or order of a mining supervisor shall be made pursuant to 30 CFR Parts 211 and 231.

§ 177.12 Consultation.

A superintendent shall consult with the Indian landowner with respect to actions he proposes to take under §§ 177.4, 177.6, 177.7, 177.9, and 177.10.

Subpart B—Coal Operations

AUTHORITY: Secs. 201, 501, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201) (25 U.S.C. 396d).

SOURCE: 42 FR 63395, Dec. 16, 1977, unless otherwise noted.

§ 177.100 Applicability.

(a) The performance standards in this subpart shall apply to all coal mining operations on Indian lands on or after December 16, 1977.

(b) The requirements of this subpart shall be incorporated in all existing and new contracts entered into for coal mining on Indian lands.

§ 177.101 Definitions.

As used throughout the regulations in this subpart, except where otherwise indicated:

Acid drainage means water with a pH of less than 6.0 discharged from active or abandoned mines and from areas affected by coal mining operations.

Acid-forming materials means earth materials that contain sulfide mineral or other materials which, if exposed to air, water, or weathering processes, will cause acids that may create acid drainage.

Act means the Surface Mining Control and Reclamation Act of 1977, (Pub. L. 95-87).

Alluvial valley floors means unconsolidated stream-laid deposits holding streams where water availability is sufficent for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and windblown deposits.

Approximate original contour means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls

and spoil piles eliminated; water impoundments may be permitted where the regulatory authority determines that they are in compliance with § 177.108.

Aquifer means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

Auger mining means a method of mining coal at a cliff or highwall by drilling holes laterally into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

Coal means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by A.S.T.M. designation 0-388-66.

Combustible material means organic material that is capable of burning either by fire or through a chemical process (oxidation) accompanied by the evolution of heat and a significant temperature rise.

Compaction means the reduction of pore spaces among the particles of soil or rock, generally done by running heavy equipment over the earth materials.

Director means the Director, Office of Surface Mining Reclamation and Enforcement, or his representative.

Disturbed area means those lands that have been affected by surface coal mining and reclamation operations.

Diversion means a channel embankment, or other manmade structure constructed for the purpose of diverting water from one area to another.

Downslope means the land surface between a valley floor and the projected outcrop of the lowest coalbed being mined along each highwall.

Embankment means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or other similar purposes.

Essential hydrologic functions means, with respect to alluvial valley floors, the role of the valley floor in collecting, storing, and regulating the natural flow of surface water and ground water, and in providing a place for irrigated and subirrigated farming, by reason of its position in the landscape and the characteristics of its underlying material.

Flood irrigation means irrigation through natural overflow or the temporary diversion of high flows in which the entire surface of the soil is covered by a sheet of water.

Ground water means subsurface water that fills available openings in rock or soil materials such that they may be considered water-saturated.

Highwall means the face of exposed overburden and coal in an open cut of a surface or underground coal mine.

Hydrologic balance means the relationship between the quality and quantity of inflow to, outflow from, and storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the quantity and quality relationships between precipitation, runoff, evaportation, and the change in ground and surface water storage.

Hydrologic regime means the entire state of water movement in a given area. It is a function of the climate, and includes the phenomena by which water first occurs as atmospheric water vapor passes into a liquid or solid form and falls as precipitation, moves thence along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

Imminent danger to the health and safety of the public means the existence of any condition, or practice, or any violation of a permit or other requirement of the Act in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

Impoundment means a closed basin formed naturally or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

Indian lands means all lands, including mineral interest, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe.

Indian Tribe means any Indian Tribe, band, group or community having a governing body recognized by the Secretary.

Intermittent or perennial stream means a stream or part of a stream that flows continuously during all (perennial) or for at least one month (intermittent) of the calendar year as a result of groundwater discharge or surface runoff. The term does not include an ephemeral stream which is one that flows for less than one month of a calendar year and only in direct response to precipitation in the immediate watershed and whose channel bottom is always above the local water table.

Leachate means a liquid that has percolated through soil, rock, or waste and has extracted dissolved or suspended materials.

Noxious plants means species that have been included on official State lists of noxious plants for the State in which the operation occurs.

Office means the Office of Surface Mining Reclamation and Enforcement established under Title II of the Act.

Operator means any person, partnership or corporation engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location.

Outslope means the exposed area sloping away from a bench or terrace being constructed as a part of a surface coal mining and reclamation operation.

Overburden means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

Permit means an approval by the Secretary of the Interior to conduct surface coal mining and reclamation operations on Indian lands.

Permittee means a person holding a permit to conduct surface coal mining and reclamation operations on Indian lands.

Person means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization.

Productivity means the vegetative yield produced by a unit area for a unit of time.

Recharge capacity means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

Recurrence interval means the precipitation event expected to occur, on the average, once in a specified interval. For example, the 10-year 24-hour precipitation event would be that 24-hour precipitation event expected to be exceeded on the average once in 10 years. Magnitude of such events are as defined by the National Weather Service Technical Paper No. 40, "Rainfall Frequency Atlas of the U.S.," May 1961, and subsequent amendments or equivalent regional or rainfall probability information developed therefrom.

Regulatory Authority means the Secretary.

Roads means access and haul roads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations, including use by coal-hauling vehicles leading to transfer, processing, or storage areas. The term includes any such road used and not graded to approximate original contour within 45 days of construction other than temporary roads used for topsoil removal and coal haulage roads within the pit area. Roads maintained with public funds such as all Federal, State, tribal, and county roads are excluded.

Runoff means precipitation that flows overland before entering a defined stream channel and becoming streamflow.

Safety factor means the ratio of the available shear strength to the developed shear stress on a potential surface of sliding determined by accepted engineering practice.

Secretary means the Secretary of the Interior or his representative.

Sediment means undissolved organic and inorganic material transported or deposited by water.

Sedimentation pond means any natural or artificial structure or depression used to remove sediment from water and store sediment or other debris.

Significant imminent environmental harm to land, air or waste resources is determined as follows:

(i) An environmental harm is any adverse impact on land, air, or water resources, including plant and animal life.

(ii) An environmental harm is imminent if a condition, practice or violation exists which (a) is causing such harm or (b) may reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under § 177.123(b) of these regulations.

(iii) An environmental harm is significant if that harm is appreciable and not immediately reparable.

Slope means average inclination of a surface, measured from the horizontal. Normally expressed as a unit of vertical distance to a given number of units of horizontal distance (eg., 1*v* to 5*h*=20 percent=11.3 degrees).

Soil horizons means contrasting layers of soil lying one below the other, parallel or nearly parallel to the land surface soil. It is the part of the soil in which basis of field characteristics and laboratory data. The three major soil horizons are—

(1) *A horizon.* The uppermost layer in the soil profile often called the surface soil. It is the part of the soil in which organic matter is most abundant, and where leaching of soluble or suspended particles is the greatest.

(2) *B horizon.* The layer immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.

(3) *C horizon.* The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

Spoil means overburden that has been removed during surface mining.

Stabilize means any method used to control movement of soil, spoil piles, or areas of disturbed earth and includes increasing bearing capacity, increasing shear strength, draining, compacting, or revegetating.

Subirrigation means irrigation of plants with water delivered to the roots from underneath.

Surface Coal Mining Operations means: (a) activities conducted on the surface of lands in connection with a surface coal mine and surface impacts incident to an underground coal mine. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for commerce at or near the mine site: *Provided, however,* That such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ per centum of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration; and (b) the areas upon which such activities occur or where such activities disturb the natural land suface. Such areas shall also include any adjacent land, the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to such activities.

Surface coal mining and reclamation operations means surface coal mining operations and all activities necessary and incidental to the reclamation of such operations. This term includes the term "surface coal mining operations."

Surface water means water, either flowing or standing, on the surface of the earth.

Suspended solids means organic or inorganic materials carried or held in suspension in water that will remain on a 0.45 micron filter.

Ton means 2,000 pounds avoirdupois (.90718 metric ton).

Toxic-forming materials means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

Toxic-mine drainage means water that is discharged from active or abandoned mines and from other areas affected by coal mining operations and which contains a substance which through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

Valley fill and head-of-hollow fill means a structure consisting of any materials other than waste placed so as to encroach upon or obstruct to any degree any natural stream channel other than those minor channels located on highland areas where overland flow in natural rills and gullies is the predominant form of runoff. Such fills are normally constructed in the uppermost portion of a V-shaped valley in order to reduce the upstream drainage area (head-of-hollow fills). Fills located further downstream (valley fills) must have larger diversion structures to minimize infiltration. Both fills are characterized by rock underdrains and are constructed in compacted lifts from the toe to the upper surface in a manner to promote stability.

Waste means earth materials, which are combustible, physically unstable, or acid-forming or toxic-forming, wasted or otherwise separated from product coal and are slurried or otherwise transported from coal processing facilities or preparation plants after physical or chemical processing, cleaning, or concentrating of coal.

Water table means upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

§ 177.102 General obligations.

(a) *Authorizations to operate.* A copy of all current permits, licenses, approved plans or other authorizations operate the mine shall be available for inspection at or near the mine site.

(b) *Mine Maps.* Any person conducting surface coal mining and reclamation operations on and after Dec. 16, 1977, shall submit two copies of an accurate map of the mine and permit area at a scale of 1:6000 or larger. The maps shall show as of Dec. 16, 1977, the lands from which coal has not yet been removed, and the lands and structures which have been used or disturbed to facilitate mining. One copy of the mine map shall be submitted to the appropriate agency of the local governing Indian Tribe, and one copy shall be submitted to the appropriate Regional Director, OSM, before March 16, 1978.

§ 177.103 Signs and markers.

(a) *Specifications.* All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of durable material. The signs and other markers shall be maintained during all operations to which they pertain and shall conform to local ordinances and codes.

(b) *Mine and permit identification signs.* Signs identifying the mine area shall be displayed at all points of access to the permit area from public roads and highways. Signs shall show the name, business address, and telephone number of the permittee and identification numbers of current mining and reclamation permits or other authorizations to operate. Such signs shall not be removed until after release of all bonds.

(c) *Perimeter markers.* The perimeter of the permit area shall be clearly marked by durable and easily recoginzed markers, or by other means approved by the regulatory authority.

(d) *Buffer zone markers.* Buffer zones as defined in § 177.108 shall be marked in a manner consistent with the perimeter markers along the interior boundary of the buffer zone.

(e) *Blasting signs.* If blasting is necessary to conduct surface coal mining operations, signs reading "Blasting Area" shall be displayed conspicuously

at the edge of blasting areas along access and haul roads within the mine property. Signs reading "Blasting Area" and explaining the blasting warning and all-clear signals shall be posted at all entrances to the permit area.

(f) *Topsoil markers.* Where topsoil or other vegetation-supporting material is segregated and stockpiled according to § 177.107(c), the stockpiled material shall be marked. Markers shall remain in place until the material is removed.

§ 177.104 Postmining use of land.

(a) *General.* All disturbed areas shall be restored in a timely manner (1) to conditions that are capable of supporting the uses which they were capable of supporting before any mining, or (2) to higher or better uses achievable under criteria and procedures of paragraph (d) of this section.

(b) *Determining premining use of land.* The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported if the land had not been previously mined and had been properly managed.

(1) The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the highest and best use that can be achieved and is compatible with surrounding areas.

(2) The postmining land use for land that has received improper management shall be judged on the basis of the premining use of surrounding lands that have received proper management.

(3) If the premining use of the land was changed within 5 years of the beginning of mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.

(c) *Land-use catagories.* Land use is categorized in the following groups. Change from one to another land use category in premining to postmining constitutes an alternate land use and the permittee shall meet the requirements of paragraph (d) of this section and all other applicable environmental protection performance standards of this part.

(1) *Heavy industry.* Manufacturing facilities, powerplants, airports or similar facilities.

(2) *Light industry and commercial services.* Office buildings, stores, parking facilities, apartment houses, motels, hotels, or similar facilities.

(3) *Public services.* Schools, hospitals, churches, libraries, water-treatment facilities, solid-waste disposal facilities, public parks and recreation facilities, major transmission lines, major pipelines, highways, underground and surface utilities, and other servicing structures and appurtenances.

(4) *Residential.* Single- and multiple-family housing (other than apartment houses) with necessary support facilities. Support facilities may include commercial services incorporated in and comprising less than 5 percent of the total land area of housing capacity, associated open space, and minor vehicle parking and recreation facilities supporting the housing.

(5) *Cropland.* Land used primarily for the production of cultivated and close-growing crops for harvest alone or in association with sod crops. Land used for facilities in support of farming operations are included.

(6) *Rangeland.* Includes rangelands and forest lands which support a cover of herbaceous or scrubby vegetation suitable for grazing or browsing use.

(7) *Hayland or pasture.* Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or cut and cured for livestock feed.

(8) *Forest land.* Land with at least a 25 percent tree canopy or land at least 10 percent stocked by forest trees of any size, including land formerly having had such tree cover and that will be naturally or artificially reforested.

(9) *Impoundments of water.* Land used for storing water for beneficial uses such as stock ponds, irrigation, fire protection, recreation, or water supply.

(10) *Fish and wildlife habitat and recreation lands.* Wetlands fish and wildlife habitat, and areas managed

primarily for fish and wildlife or recreation.

(11) *Combined uses.* Any appropriate combination of land uses where one land use is designated as they primary land use and one or more other land uses are designated as secondary land uses.

(d) *Criteria for approving alternative postmining use of land.* An alternative postmining land use shall be approved by the regulatory authority, after consultation with the landowner or the land-management agency on Federal lands, if the following criteria are met.

(1) The proposed land use is compatible with adjacent land use and, where applicable, with existing Tribal and Federal land use policies and plans.

A written statement of the views of the authorities with statutory responsibilities for land use policies and plans shall accompany the request for approval. The permittee shall obtain any required approval of Tribal or Federal land management agencies, including any necessary zoning or other changes necessarily required for the final land use.

(2) Specific plans have been prepared which show the feasibility of the proposed land use as related to needs, projected land use trends, and markets and that include a schedule showing how the proposed use will be developed and achieved within a reasonable timne after mining and be sustained. The regulatory authority may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.

(3) Provision of any necessary public facilities is assured as evidenced by letters of commitment from parties other than the permittee, as appropriate, to provide them in a manner compatible with the permittee's plans.

(4) Specific and feasible plans for financing attainment and maintenance of the postmining land use including letters of commitment from parties other than the permittee as approprate, if the postmining land use to be developed by such parties.

(5) The plans are designed under the general supervision of a regiatered professional engineer, or other appropriate professional, who will ensure that the plans conform to applicable accepted standards for adequate accepted standards for adequate land stability, drainage, and vegetative cover, and aesthetic design appropriate for the postmining use of the site.

(6) The proposed use or uses will neither present actual or probable hazard to public health or safety nor will they pose any actual or probable threat of water flow diminution or pollution.

(7) The use or uses will not involve unreasonable delays in reclamation.

(8) Necessary approval of measures to prevent or mitigate adverse effects on fish and wildlife has been obtained from the regulatory authority and appropriate Tribal and Federal fish and wildlife management agencies.

(9) Proposals to change premining land uses of range, fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance such as seeding, plowing, cultivation, fertilization, or other simiar practices to be practicable or to comply with applicable Federal and Tribal laws, shall be reviewed by the regulatory authority to assure that:

(i) There is a firm written commitment by the permittee or by the landowner or land manager to provide sufficient crop management after release of applicable performance bonds to assure that the proposed postmining cropland use remains practical and reasonable;

(ii) There is sufficient water available and committee to maintain crop production; and

(iii) Topsoil quality and depth are shown to be sufficient to support the proposed use.

(10) The regulatory authority has provided by public notice not less than 45 days nor more than 60 days for interested citizens and Tribal and Federal agencies to review and comment on the proposed land use.

§ 177.105 Backfilling and grading.

In order to achieve the approximate original contour, the permittee shall,

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except as provided in this section, transport, backfill, compact (where advisable to ensure stability or to prevent leaching of toxic materials), and grade all spoil material to eliminate all highwalls, spoil piles, and depressions. Cut-and-fill terraces may be used only in those situations expressly identified in this section. The postmining graded slopes must approximate the premining natural slopes in the area as defined in paragraph (a) of this section.

(a) *Slope measurements.* (1) To determine the natural slopes of the area before mining, sufficient slopes to adequately represent the land surface configuration, and as approved by the regulatory authority in accordance with site conditions, must be accurately measured and recorded. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed; or, where this is impractical, at locations specified by the regulatory authority. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances as determined by the regulatory authority to be representative of the premining configuration of the land. Slope measurements shall take into account natural variations in slope so as to provide accurate representation of the range of natural slopes and shall reflect geomorphic differences of the area to be disturbed. Slope measurements may be made from topographic maps showing contour lines, having sufficient detail and accuracy consistent with the submitted mining and reclamation plan.

(2) After the disturbed area has been graded, the final graded slopes shall be measured at the beginning and end of lines established on the prevailing slope at locations representative of premining slope conditions and approved by the regulatory authority. These measurements must not be made so as to allow unacceptably steep slopes to be constructed.

(b) *Final graded slopes.* (1) The final graded slopes shall not exceed either the approximate premining slopes as determined according to paragraph (a)(1) of this section and approved by the regulatory authority or any lesser slope specified by the regulatory authority based on consideration of soil, climate, or other characteristics of the surrounding area. Postmining final graded slopes need not be uniform. The requirements of this paragraph may be modified by the regulatory authority where the mining is reaffecting previously mined lands that have not been restored to the standards of this section and sufficient spoil is not available to return to the slope determined according to paragraph (a)(1) of this section. Where such modifications are approved, the permittee shall, as a minimum, be required to:

(i) Retain all overburden and spoil on the solid portion of existing or new benches; and

(ii) Backfill and grade to the most moderate slope possible to eliminate the highwall which does not exceed the angle of repose or such lesser slopes as is necessary to assure stability.

(2) On approval by the regulatory authority and in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed if the terraces are compatible with the postmining land use approved under § 177.104, and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(i) The width of the individual terrace bench shall not exceed 20 feet unless specifically approved by the regulatory authority as necessary for stability, erosion control, or roads included in the approved postmining land use plan.

(ii) The vertical distance between terraces shall be as specified by the regulatory authority to prevent excessive erosion and to provide long-term stability.

(iii) The slope of the terrace outslope shall not exceed $1v:2h$ (50 percent). Outslopes which exceed $1v:2h$ (50 percent) may be approved if they have a minimum static safety factor of more than 1.5 and provide adequate control over erosion and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.

(iv) Culverts and underground rock drains shall be used on the terrace only when approved by the regulatory authority.

(3) All operations on steep slopes of 20 degrees or more or on such lesser slopes as the regulatory authority defines as a *steep slope* shall meet the provisions of § 177.111 of this part.

(c) *Mountaintop removal.* The requirements of this paragraph shall apply to surface mining operations which remove entire coal seams in the upper part of a mountain, ridge, or hill by removing all of the overburden, and where the requirements for achieving the approximate original contour of this section cannot be met. Final graded top plateau slopes on the mined area shall be less than 1*v*:5*h* so as to create a level plateau or gently rolling configuration and the outslopes of the plateau shall not exceed 1*v*:2*h*, except where engineering data substantiates and the regulatory authority finds that a minimum static safety factor of 1.5 (or higher factors specified by the regulatory authority) will be attained. Although the area need not be restored to approximate original contour, all highwalls, spoil piles, and depressions except as provided in paragraphs (d) and (e) of this section shall be eliminated.

(d) *Small depressions.* The requirement of this section to achieve approximate original contour does not prohibit construction of small depressions if they are approved by the regulatory authority to minimize erosion, conserve soil moisture or promote revegetation. These depressions shall be compatible with the approved postmining land use and shall not be inappropriate substitutes for construction of lower grades on the reclaimed lands. Depressions approved under this section shall have a holding capacity of less than 1 cubic yard of water or, if it is necessary that they be larger, shall not restrict normal access throughout the area or constitute a hazard. Large, permanent impoundments shall be governed by paragraph (e) of this section and by § 177.108.

(e) *Permanent impoundments.* Permanent impoundments may be retained in mined and reclaimed areas provided all highwalls are eliminated by grading to appropriate contour and the provisions for postmining land use (§ 177.104) and protection of the hydrologic balance (§ 177.108) are met. No impoundments shall be constructed on top of areas in which excess materials are deposited pursuant to § 177.106 of this part. Impoundments shall not be used to meet the requirements of paragraph (j) of this section.

(f) *Definition of thin and thick restored overburden.* The thin overburden provisions of paragraph (g) of this section may apply only where the final thickness is less than 0.8 of the initial thickness. The thick overburden provisions of paragraph (h) of this section may apply only where the final thickness is greater than 1.2 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness. Final thickness is the product of the overburden thickness times the bulking factor to be determined for each mine area. The provisions of paragraphs (g) and (h) apply only when operations cannot be carried out to comply with the requirements of paragraph (a) of this section to achieve the approximate original contour.

(g) *Thin overburden.* In surface coal mining operations carried out continuously in the same limited pit area for more than 1 year from the day coal-removal operations begin and where the volume of all available spoil and suitable waste materials is demonstrated to be insufficient to achieve approximate original contour, surface coal mining operations shall be conducted to meet, at a minimum, the following standards:

(1) Transport, backfill, and grade, using all available spoil and suitable waste materials from the entire mine area, to attain the lowest practicable stable grade, which may not exceed the angle of repose, and to provide adequate drainage and long-term stability of the regraded areas.

(2) Eliminate highwalls by grading or backfilling to stable slopes not exceeding 1*v*:2*h* (50 percent), or such lesser slopes as the regulatory authority may specify to reduce erosion, maintain the hydrologic balance, or allow the approved postmining land use.

(3) Transport, backfill, grade, and revegetate to achieve an ecologically sound land use compatible with the prevailing land use in unmined areas surrounding the permit area.

(4) Transport, backfill, and grade to ensure the impoundments are constructed only where it has been demonstrated to the regulatory authority's satisfaction that all requirements of § 177.108 have been met and that the impoundments have been approved by the regulatory authority as meeting the requirements of this part and all other applicable Federal and Tribal regulations.

(h) *Thick overburden.* In surface coal mining operations where the volume of spoil is demonstrated to be more than sufficient to achieve the approximate original contour surface coal mining operations shall be conducted to meet at a minimum the following standards:

(1) Transport, backfill, and grade all spoil and wastes not required to achieve approximate original contour in the surface mining area to the lowest practicable grade.

(2) Deposit, backfill, and grade excess spoil and wastes only within the permit area and dispose of such materials in conformance with this part.

(3) Transport, backfill, and grade excess spoil and wastes to maintain the hydrologic balance in accordance with this part and to provide long-term stability.

(4) Transport, backfill, grade and revegetate wastes and excess spoil to achieve an ecologically sound land use compatible with the prevailing land uses in unmined areas surrounding the permit area.

(5) Eliminate all highwalls and depressions except as stated in paragraph (e) of this section by backfilling with spoil and suitable waste materials.

(i) *Regrading or stabilizing rills and gullies.* When rills or gullies deeper than 9 inches form in areas that have been regraded and the topsoil replaced but vegetation has not yet been established, the permittee shall fill, grade, or otherwise stabilize the rills and gullies and reseed or replant the areas according to § 177.110. The regulatory authority shall specify that rills or gullies of lesser size be stabilized if the rills or gullies will be disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

(j) *Covering coal and acid-forming, toxic-forming, combustible, and other waste materials; stabilizing backfilled materials; and using waste material for fill.* (1) *Cover.* All exposed coal seams remaining after mining and any acid-forming, toxic-forming, combustible materials, or any other waste materials identified by the regulatory authority that are exposed, used, or produced during mining shall be covered with a minimum of 4 feet of nontoxic and noncombustible material; or, if necessary, treated to neutralize toxicity in order to prevent water pollution and sustained combustion, and to minimize adverse effects on plant growth and land uses. Where necessary to protect against upward migration of salts, exposure by erosion, to provide an adequate depth for plant growth, or to otherwise meet local conditions, the regulatory authority shall specify thicker amounts of cover using nontoxic material. Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution or otherwise violate the provisions of § 177.108 of this part.

(2) *Stabilization.* Backfilled materials shall be selectively placed and compacted wherever necessary to prevent leaching of toxic-forming materials into surface or subsurface waters in accordance with § 177.108 and wherever necessary to ensure the stability of the backfilled materials. The method of compacting material and the design specifications shall be approved by the regulatory authority before the toxic materials are covered.

(3) *Use of waste materials as fill.* Before waste materials from a coal preparation or conversion facility or from other activities conducted outside the permit area such as municipal wastes are used for fill material, it must be demonstrated to the regulatory authority by hydrogeological means and chemical and physical analyses that use of these materials will

not adversely affect water quality, water flow, and vegetation; will not present hazards to public health and safety; and will not cause instability in the backfilled area.

(k) *Grading along the contour.* All final grading, preparation of overburden before replaceent of topsoil, and placement of topsoil, in accordance with § 177.107, shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation or placement along the contour would be hazardous to equipment operators then grading, preparation or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

§ 177.106 Disposal of spoil and waste materials in areas other than the mine workings or excavations.

(a) *Disposal of spoil in other than valley or head-of-hollow fills.* Spoil not required to achieve the approximate original contour shall be transported to and placed in a controlled (engineered) manner in disposal areas other than the mine workings or excavations only if all the following conditions, in addition to the other requirements of this part, are met:

(1) The disposal areas shall be within the permit area, and they must be approved by the regulatory authority as suitable for construction of fills in accordance with the requirements of this paragraph;

(2) The disposal areas shall be located on the most moderate sloping and naturally stable areas available as approved by the regulatory authority. Where possible, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm if such placement provides additional stability and prevents mass movement;

(3) The fill shall be designed using recognized professional standards, certified by a registered professional engineer, and approved by the regulatory authority;

(4) Where the slope in the disposal area exceeds 1*v*:2.8*h* (36 percent), or such lesser slope designated by the regulatory authority based on local conditions, measures such as keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill.

(5) The disposal area does not contain springs, natural water courses or wet weather seeps unless lateral drains are constructed from the wet areas to the underdrains in such a manner that infiltration of the water into the spoil pile will be prevented.

(6) All organic material shall be removed from the disposal area and the topsoil must be removed and segregated pursuant to § 177.107 before the material is placed in the disposal area. However, if approved by the regulatory authority, organic material may be used as mulch or may be included in the topsoil.

(7) The spoil shall be transported and placed in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings, and to ensure long-term stability. The final configuration of the fill must be suitable for postmining land uses approved in accordance with § 177.104. Terraces shall not be constructed unless approved by the regulatory authority.

(8) If any portion of the fill interrupts, obstructs, or encroaches upon any natural drainage channel, the entire fill is classified as a valley or head-or-hollow fill and must be designed and constructed in accordance with the requirements of paragraph (b) of this section.

(9) The fill shall be inspected for stability by a registered engineer or qualified professional specialist during critical construction periods to assure removal of all organic material and topsoil, placement of under-drainage systems, and proper construction of terraces according to the approved plan. The registered engineer or other qualified professional specialist shall provide a certified report after each inspection that the fill has been con-

structed as specified in the design approved by the regulatory authority.

(b) *Disposal of spoil in valley or head-of-hollow fills.* Waste material must not be disposed of in valley or head-of-hollow fills. Spoil to be disposed of in natural valleys must be placed in accordance with the following requirements:

(1) The disposal areas shall be within the permit area, and they must be approved by the regulatory authority as suitable for construction of fills in accordance with the requirements of paragraph (b) of this section.

(2) The disposal site shall be near the ridge top of a valley selected to increase the stability of the fill and to reduce the drainage area above the fill. Where possible, spoil shall be placed above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement.

(3) The fill shall be designed using recognized professional standards, certified by a registered professional engineer and approved by the regulatory authority.

(4) All organic material shall be removed from the dispoal area and the topsoil must be removed and segregated pursuant to § 177.107 of this part before the material is placed in the disposal area. However, if approved by the regulatory authority, organic material may be used as mulch or may be included in the topsoil.

(5) Where the slope in the disposal area exceeds 1*v*:2.8*h* (36 percent), or such lesser slope designated by the regulatory authority based on local conditions, measures such as keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill.

(6) A system of under drains constructed of durable rock shall be installed along the natural drainage system shall extend from the toe to the head of the fill and contain lateral drains to each area of potential drainage or seepage. In constructing the underdrains, no more than 10 percent of the rock may be less than 12 inches in size and no single rock may be larger than 25 percent of the width of the drain. No rock shall be used in underdrains if it tends to easily disintegrate and thereby clog the drain or if it is acid-forming or toxic-forming. The minimum size of the main underdrain shall be:

Total amount of fill material	Predominant type of fill material	Minimum size of drain in feet	
		Width	Height
Less than 1,000,000 yd ^{3}	Sandstone	10	4
Do	Shale	16	8
More than 1,000,000 yd ^{3}	Sandstone	16	8
Do	Shale	16	8

(7) Spoil shall be transported and placed in a controlled manner and concurrently compacted as specified by the regulatory authority in lifts that are less than 4 feet thick in order to achieve the densities designed to ensure mass stability, to prevent mass movement, to avoid contamination of the rock underdrain and to prevent formation of voids. The final configuration of the fill must be suitable for postmining land uses approved in accordance with § 177.104.

(8) Terraces shall be constructed to stabilize the face of the fill. The outslope of each terrace shall not exceed 50 feet in length and the width of the terrace shall not be less than 20 feet.

(9) The tops of the fill and each terrace shall be graded no steeper than 1*v*:20*h* (5 percent) and shall be constructed to drain surface water to the sides of the fill where stabilized surface channels shall be established off the fill to carry drainage away from the fill. Drainage shall not be directed over the outslope of the fill unless approved by the regulatory authority.

(10) All surface drainage from the undisturbed area above the fill shall be diverted away from the fill by approved structures leading into water courses.

(11) The outslope of the fill shall not exceed 1*v*:2*h* (50 percent). The regulatory authority may require a flatter slope.

(12) The fill shall be inspected for stability by a registered engineer or qualified professional specialist during critical construction periods and at least quarterly throughout construction to assure removal of all organic material and topsoil, placement of under drainage systems, and proper

construction of terraces according to the approved plan. The registered engineer or other qualified professional specialist shall provide a certified report, after each inspection that the fill has been constructed as specified in the design approved by the regulatory authority.

§ 177.107 Topsoil handling.

To prevent topsoil from being contaminated by spoil or waste materials, the permittee shall remove the topsoil as a separate operation from areas to be disturbed. Topsoil shall be immediately redistributed according to the requirements of paragraph (b) of this section on areas graded to the approved postmining configuration. The topsoil shall be segregated, stockpiled, and protected from wind and water erosion and from contaminants which lessen its capability to support vegetation if sufficient graded areas are not immediately available for redistribution.

(a) *Topsoil removal.* All topsoil to be salvaged shall be removed before any drilling for blasting, mining, or other surface disturbance.

(1) All topsoil shall be removed unless use of alternative materials is approved by the regulatory authority in accordance with paragraph (a)(4) of this section.Where the removal of topsoil results in erosion that may cause air or water pollution, the regulatory authority shall limit the size of the area from which topsoil may be removed at any one time and specify methods of treatment to control erosion of exposed overburden.

(2) All of the A horizon of the topsoil as identified by soil surveys shall be removed according to paragraph (a) of this section and then replaced on disturbed areas as the surface soil layers. Where the A horizon is less than 6 inches, a 6-inch layer that includes the A horizon and the unconsolidated material immediately below the A horizon (or all unconsolidated material if the total available is less than 6 inches) shall be removed and the mixture segregated and replaced as the surface soil layer.

(3) Where necessary to obtain soil productivity consistent with postmining land use, the regulatory authority may require that the B horizon or portions of the C horizon or other underlying layers demonstrated to have comparable quality for root development be segregated and replaced as subsoil.

(4) Selected overburden materials may be used instead of, or as a supplement to, topsoil where the resulting soil medium is equal to or more suitable for vegetation, and if all the following requirements are met:

(i) The permittee demonstrates that the selected overburden materials or an overburden-topsoil mixture is more suitable for restoring land capability and productivity by the results of chemical and physical analyses. These analyses shall include determinations of pH, percent organic material, nitrogen, phosphorus, potassium, texture class and water-holding capacity, and such other analyses as required by the regulatory authority. The regulatory authority also may require that results of field-site trials or greenhouse tests be used to demonstrate the feasibility of using such overburden materials.

(ii) The chemical and physical analyses and the results of field-site trials and greenhouse tests are accompanied by a certification from a qualified soil scientist or agronomist.

(iii) The alternative material is removed, segregated, and replaced in conformance with this section.

(b) *Topsoil redistribution.* (1) After final grading and before the topsoil is replaced, regraded land shall be sacrificed or otherwise treated to eliminate slippage surfaces and to promote root penetration.

(2) Topsoil shall be redistributed in a manner that—

(i) Achieves an approximate uniform thickness consistent with the postmining land uses.

(ii) Prevents excess compaction of the spoil and topsoil; and

(iii) Protects the topsoil from wind and water erosion before it is seeded and planted.

(c) *Topsoil storage.* If the permit allows storage of topsoil, the stockpiled topsoil shall be placed on a stable area within the permit area where it will not be disturbed or be exposed to excessive water, wind erosion,

or contaminants which lessen its capability to support vegetation before it can be redistributed on terrain graded to final contour. Stockpiles shall be selectively placed and protected from wind and water erosion, unnecessary compaction, and contamination by undesirable materials either by a vegetative cover as defined in § 177.110(g) or by other methods demonstrated to provide equal protection such as snow fences, chemical binders, and mulching. Unless approved by the regulatory authority, stockpiled topsoil shall not be moved until required for redistribution on a disturbed area.

(d) *Nutrients and soil amendments.* Nutrients and soil amendments in the amounts and analyses as determined by soil tests shall be applied to the surface soil layer so that it will support the postmining requirements of § 177.104 and the revegetation requirments of § 177.110.

§ 177.108 Protection of the hydrologic system.

The permittee shall plan and conduct coal mining and reclamation operations to minimize disturbance to the prevailing hydrologic balance in order to prevent long-term adverse changes in the hydrologic balance that could result from surface coal mining and reclamation operations, both on- and off-site. Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized such that the postmining land use of the disturbed land is not adversely affected and applicable Federal and Tribal statutes and regulations are not violated. The permittee shall conduct operations so as to minimize water pollution and shall, where necessary, use treatment methods to control water pollution. The permittee shall emphasize surface coal mining and reclamation practices that will prevent or minimize water pollution and changes in flows in preference to the use of water treatment facilities. Practices to control and minimize pollution include, but are not limited to, stabilizing disturbed areas through grading, diverting runoff, achieving quick growing stands of temporary vegetation, lining drainage channels with rock or vegetation, mulching, sealing acid-forming and toxic-forming materials, and selectively placing waste materials in backfill areas. If pollution can be controlled only by treatment the permittee shall operate and maintain the necessary water-treatment facilities for as long as treatment is required.

(a) *Water quality standards and effluent limitations.* All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded, or planted shall be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area. Sedimentation ponds shall be retained until drainage from the disturbed area have met the water quality requirements of this section and the revegetation requirements of § 177.110 have been met. The regulatory authority may grant exemptions from this requirement only when the disturbed drainage area within the total disturbed area is small if the permittee shows that sedimentation ponds are not necessary to meet the effluent limitations of this paragraph and to maintain water quality in downstream receiving waters. For purpose of this section only, disturbed area shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this section and the upstream area is not otherwise disturbed by the permittee. Sedimentation ponds required by this paragraph shall be constructed in accordance with paragraph (e) of this section in appropriate locations prior to any mining in the affected drainage area in order to control sedimentation or otherwise treat water in accordance with this paragraph. Discharges from areas disturbed by surface coal mining and reclamation operations must meet all applicable Federal and Tribal laws and regulations and, at a minimum, the following numerical of effluent limitations:

EFFLUENT LIMITATIONS

[In milligrams per liter, (mg/l) except for pH]

Effluent characteristics	Maximum allowable[1]	Average of daily values for 30 consecutive discharge days[1]
Iron, total	7.0	3.5
Manganese, total	4.0	2.0
Total suspended solids[2]	70.0	35.0
pH[3]	Within the range 6.0 to 9.0	

[1] Based on representative sampling.

[2] In Arizona, Colorado, Montana, New Mexico, North Dakota, South Dakota, Utah, and Wyoming, total suspended solids limitations will be determined on a case-by-case basis, but they must not be greater than 45 mg/l (maximum allowable) and 30 mg/l (average of daily value for 30 consecutive discharge days) based on a representative sampling.

[3] Where the application of neutralization and sedimentation treatment technology results in inability to comply with the manganese limitations set forth, the regulatory authority may allow the pH level in the discharge to exceed to a small extent the upper limit of 9.0 in order that the manganese limitations will be achieved.

(1) Any overflow or other discharge of surface water from the disturbed area within the permit area demonstrated by the permittee to result from a precipitation event larger than a 10-year, 24-hour frequency event will not be subject to the effluent limitations of paragraph (a) of this section.

(2) The permittee shall install, operate, and maintain adequate facilities to treat any water discharged from the disturbed area that violates applicable Federal or Tribal laws or regulations or the limitations of paragraph (a) of this section. If the pH of waters to be discharged from the disturbed area is normally less than 6.0, an automatic lime feeder or other neutralization process approved by the regulatory authority shall be installed, operated, and maintained. If the regulatory authority finds (i) that small and infrequent treatment requirements to meet applicable standards do not necessitate use of an automatic neutralization process, and (ii) that the mine normally produces less than 500 tons of coal per day, then the regulatory authority may approve the use of a manual system if the permittee ensures consistent and timely treatment.

(b) *Surface-water monitoring.* (1) The permittee shall submit for approval by the regulatory authority a surface-water monitoring program which meets the following requirements:

(i) Provides adequate monitoring of all discharge from the disturbed area.

(ii) Provides adequate data to describe the likely daily and seasonal variation in discharges from the disturbed area in terms of water flow, pH, total iron, total manganese, and total suspended solids and, if requested by the regulatory authority, and other parameter characteristic of the discharge.

(iii) Provides monitoring at appropriate frequencies to measure normal and abnormal variations in concentrations.

(iv) Provides an analytical quality control system including standard methods of analysis such as those specified in 40 CFR 136.

(v) Provides a regular report of all measurements to the regulatory authority within 60 days of sample collection unless violations of permit conditions occur in which case the regulatory authority shall be notified immediately after receipt of analytical results by the permittee. If the discharge is subject to regulation by a Federal permit issued in compliance with the Federal Water Pollution Control Act Amendment of 1972 (33 U.S.C. §§ 1251–1378), a copy of the completed reporting form supplied to meet the permit requirements may be submitted to the regulatory authority to satisfy the reporting requirements, if the data meet the sampling frequency and other requirements of this paragraph.

(2) After disturbed areas have been regraded and stabilized in accordance with this part, the permittee shall monitor surface water flow and quality. Data from this monitoring shall be used to demonstrate that the quality and quantity of runoff without treatment will be consistent with the requirement of this section to minimize disturbance to the prevailing hydrologic balance and with the requirements of this part to attain the approved postmining land use. These data shall provide a basis for approval by the regulatory authority for removal of water quality or flow control systems

and for determining when the requirements of this section are met. The regulatory authority shall determine the nature of data, frequency of collection, and reporting requirements.

(3) Equipment, structures, and other measures necessary to accurately measure and sample the quality and quantity of surface water discharges from the disturbed area of the permit area shall be properly installed, maintained, and operated and shall be removed when no longer required.

(c) *Diversion and conveyance of overland flow away from disturbed areas.* In order to minimize erosion and to prevent or remove water from contacting toxic-producing deposits, overland flow from undisturbed areas may, if required or approved by the regulatory authority, be diverted away from disturbed areas by means of temporary or permanent diversion structures. The following requirements shall be met:

(1) Temporary diversion structures are those used during mining and reclamation. When no longer needed, these structures shall be removed and the area reclaimed. Temporary diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a 10-year recurrence interval, or a larger event as specified by the regulatory authority.

(2) Permanent diversion structures are those remaining after mining and reclamation and approved for retention by the regulatory authority and other appropriate Tribal and Federal agencies. To protect fills and property and to avoid danger to public health and safety, permanent diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a 100-year recurrence interval, or a larger event as specified by the regulatory authority. Permanent diversion structures shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall not be used unless specifically required to prevent seepage or to provide stability and are approved by the regulatory authority.

(3) Diversions shall be designed, constructed, and maintained in a manner to prevent additional contributions of suspended solids to streamflow or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall such contributions be in excess of requirements set by applicable Tribal or Federal law. Appropriate sediment control measures for these diversions shall include, but not be limited to, maintenances of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.

(d) *Stream channel diversions.* (1) Flow from perennial and intermittent streams within the permit area may be diverted only when the diversions are approved by the regulatory authority and they are in compliance with tribal and Federal statutes and regulations. When streamflow is allowed to be diverted, the new stream channel shall be designed and constructed to meet the following requirements:

(i) The average stream gradient shall be maintained and the channel designed, constructed, and maintained to remain stable and to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall such contributions be in excess of requirements set by applicable Tribal or Federal law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be used only when approved by the regulatory agency for temporary diversions where necessary or for permanent diversions where they are stable and will require only infrequent maintenance.

(ii) Channel, bank, and flood-plain configurations shall be adequate to safely pass the peak runoff of a precipitation event with a 10-year recurrence interval for temporary diversions and a 100-year recurrence interval for permanent diversions, or larger events as specified by the regulatory authority.

(iii) Fish and wildlife habitat and water and vegetation of significant value for wildlife shall be protected in consultation with appropriate Tribal and Federal fish and wildlife management agencies.

(2) All temporary diversion structures shall be removed and the affected land regraded and revegetated consistent with the requirements of § 177.105 and § 177.110. At the time such diversions are removed, the permittee shall ensure that downstream water treatment facilities previously protected by the diversion are modified or removed to prevent over-topping or failure of the facilities.

(3) *Buffer zone.* No land within 100 feet of an intermittent or perennial stream shall be disturbed by surface coal mining and reclamation operations unless the regulatory authority specifically authorizes surface coal mining and reclamation operations through such a stream. The area not to be disturbed shall be designated a buffer zone and marked as specified in § 177.103.

(e) *Sediment control measures.* Appropriate sediment control measures shall be designed, constructed, and maintained to prevent additional contributions of sediment to stream flow or to runoff outside the permit area to the extent possible, using the best technology currently available. Sediment control measures may include, but not limited to, sedimentation ponds, diversion structures, sediment traps, straw dikes, riprap, check dams, vegetative filters, dugout ponds, and chemical treatment. Sedimentation ponds may be used individually or in a series and shall (either individually of in series) meet the following criteria:

(1) Sedimentation ponds must provide at least a 24-hour detention time and a surface area of at least 1 square foot for each 50 gallons per day of inflow for runoff entering the pond(s) that results from a 10-year, 24-hour precipitation event. Runoff diverted, in accordance with paragraphs (c) and (d) of this section, away from disturbed drainage areas need not be considered in sedimentation pond design. Required sedimentation pond surface area and detention time may be accordingly reduced by the appropriate use of chemical treatment measures such as flocculation and coagulation if approved by the regulatory authority.

(2) An additional sediment storage volume must be provided equal to 0.2 acre-feet for each acre of disturbed area within the upstream drainage area. Upon approval of the regulatory authority, the sediment storage volume may be reduced in an amount, as demonstrated by the permittee equal to the sediment removed by other appropriate sediment control measures.

(3) Ponds may be of the permanent pool or self-dewatering type. Dewatering-type ponds shall use siphon or other dewatering methods approved by the regulatory authority to prevent discharges of pollutants within the design flow.

(4) Spillway systems shall be properly located to maximize the distances from the point of inflow into the pond to maximize detention times. Spillway systems shall be provided to safely discharge the peak runoff from a precipitation event with a 25-year recurrence interval, or larger event as specified by the regulatory authority.

(5) Sediment shall be removed from sedimentation ponds when the volume of sediment accumulates to 80 percent of the sediment storage volume required. Sediment removal shall be done in a manner that minimizes adverse effects on surface waters due to its chemical and physical characteristics, on infiltration, on vegetation, and on surface and ground water quality. Sediment that has been removed from sedimentation ponds and that meets the requirements for topsoil may be redistributed over graded areas in accordance with § 177.107.

(6) If a sedimentation pond has an embankment that is more than 20 feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre-feet or more, the following additional requirements shall be met:

(i) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff resulting from a 100-year, 6-hour precipitation event, or larger event as specified by the regulatory authority.

(ii) Ponds shall be designed and constructed with an acceptable static safety factor of at least 1.5 of maximum design flood elevation of the

pool to ensure embankment slope stability.

(iii) The minimum top width of the embankment shall not be less than the quotient of H+35/5 where H is the height of the embankment as measured from the upstream toe of the top of the embankment.

(iv) Ponds shall have appropriate barriers to control seepage along conduits that extend through the embankment.

(7) All pounds shall be designed and inspected under the supervision of, and certified after construction by a registered professional engineer.

(8) All ponds, including those not meeting the size or other criteria of 30 CFR 77.216(a), shall be examined for structural weakness, erosion, and other hazardous conditions in accordance with the inspection requirements contained in 30 CFR 77.216-3.

(9) All ponds shall be removed and the affected land regarded and revegetated consistent with the requirements of § 177.105 and § 177.110, unless the regulatory authority approves retention of the ponds pursuant to paragraph (k) of this section.

(f) *Discharge structures.* Discharges from sedimentation ponds and diversions shall be controlled, where necessary, using energy dissipators, surge ponds, and other devices to reduce erosion and prevent deepening or enlargement of stream channels and to minimize disturbances to the hydrologic balance.

(g) *Acid and toxic materials.* Drainage from acid-forming and toxic-forming mine waste materials and soils into ground and surface water shall be avoided by:

(1) Identifying, burying, and treating where necessary, spoil or other materials that, in the judgment of the regulatory authority, will be toxic to vegetation or that will adversely affect water quality if not treated or buried. Such material shall be disposed of in accordance with the provision of § 177.105(j);

(2) Preventing or removing water from contact with toxic-producing deposits;

(3) Burying or otherwise treating all toxic or harmful materials within 30 days, if such materials are subject to wind and water erosion, or within a lesser period designated by the regulatory authority. If storage of such materials is approved, the materials shall be placed on impermeable material and protected from erosion and contact with surface water. Coal waste ponds and other coal waste materials shall be maintained according to § 177.108(g)(4), and § 177.109 shall apply;

(4) Burying or otherwise treating waste materials from coal preparation plants no later than 90 days after the cessation of the filling of the disposal area. Burial or treatment shall be in accordance with § 177.105(j);

(5) Casing, sealing or otherwise managing boreholes, shafts, wells, and auger holes or other more or less horizontal holes to prevent pollution of surface or ground water and to prevent mixing of ground waters of significantly different quality. All boreholes that are within the permit area but are outside the surface coal mining area or which extend beneath the coal to be mined and into water bearing strata shall be plugged permanently in a manner approved by the regulatory authority, unless the boreholes have been approved for use in monitoring.

(6) Taking such other actions as required by the regulatory authority.

(h) *Ground water*—(1) *Recharge capacity of reclaimed lands.* The disturbed area shall be reclaimed to restore approximate premining recharge capacity through restoration of the capability of the reclaimed areas as a whole to transmit water to the ground water system. The recharge capacity should be restored to support the approved postmining land use and to minimize disturbances to the prevailing hydrologic balance at the mined area and in associated offsite areas. The permittee shall be responsible for monitoring according to paragraph (h)(3) of this section to ensure operations conform to this requirement.

(2) *Ground water systems.* Backfilled materials shall be placed to minimize adverse effects on ground water flow and quality, to minimize offsite effects, and to support the approved postmining land use. The permittee shall be responsible for performing

monitoring according to paragraph (h)(3) of this section to ensure operations conform to this requirement.

(3) *Monitoring.* Ground water levels, infiltration rates, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the regulatory authority to determine the effects of surface coal mining and reclamation operations on the recharge capacity of reclaimed lands and on the quantity and quality of water in ground water systems at the mine area and in associated offsite areas. When operations are conducted in such a manner that may affect the ground water system, ground water levels and ground water quality shall be periodically monitored using wells that can adequately reflect changes in ground water quantity and quality resulting from such operations. Sufficient water wells must be used by the permittee. The regulatory authority may require drilling and development of additional wells if needed to adequately monitor the ground-water system. As specified and approved by the regulatory authority, additional hydrologic tests, such as infiltration tests and aquifer tests must be undertaken by the permittee to demonstrate compliance with paragraphs (h) (1) and (2) of this section.

(i) *Water rights and replacement.* The permittee shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution or interruption proximately resulting from surface coal mine operation by the permittee.

(j) *Alluvial valley floors west of the 100th meridian west longitude.* (1) Surface coal mining operations conducted in or adjacent to alluvial valley floors shall be planned and conducted so as to preserve the essential hydrologic functions of these alluvial valley floors throughout the mining and reclamation process. These functions shall be preserved by maintaining or reestablishing those hydrologic and biologic characteristics of the alluvial valley floor that are necessary to support the functions. The permittee shall provide information to the regulatory authority as required in paragraph (j)(3) of this section to allow identification of essential hydrologic functions and demonstrate that the functions will be preserved. The characteristics of an alluvial valley floor to be considered include, but are not limited to:

(i) The longitudinal profile (gradient), cross-sectional shape, and other channel characteristics of streams that have formed within the alluvial valley floor and that provide for maintenance of the prevailing conditions of surface flow;

(ii) Aquifers (including capillary zones and perched water zones) and confining beds within the mined area which provide for storage, transmission, and regulation of natural ground water and surface water that supply the alluvial valley floors;

(iii) Quantity and quality of surface and ground water that supply alluvial valley floors;

(iv) Depth to and seasonal fluctuations of ground water beneath alluvial valley floors;

(v) Configuration and stability of the land surface in the flood plain and adjacent low terraces in alluvial valley floors as they allow or facilitate irrigation with flood waters or subirrigation and maintain erosional equilibrium; and

(vi) Moisture-holding capacity of soils (or plant growth medium) within the alluvial valley floors, and physical and chemical characteristics of the subsoil which provide for sustained vegetation growth or cover through dry months.

(2) Surface coal mining operations located west of the 100th meridian west longitude shall not interrupt, discontinue, or preclude farming on alluvial valley floors and shall not materially damage the quantity or quality of surface or ground water that supplies these valley floors unless the premining land use has been undeveloped rangeland which is not significant to farming on the alluvial valley floors or unless the area of affected alluvial valley floor is small and provides negligible support for the production from one or more farms. This paragraph

(j)(2) of this section does not apply to those surface coal mining operations that:

(i) Were in production in the year preceding August 3, 1977, were located in or adjacent to an alluvial valley floor, and produced coal in commercial quantities during the year preceding August 3, 1977; or

(ii) Had specific permit approval by the Bureau of Indian Affairs before August 3, 1977, to conduct surface coal mining operations for an area within an alluvial valley floor.

(3) (i) Before surface mining and reclamation operations authorized under paragraph (j)(2) of this section may be issued a new, revised or amended permit, the permittee shall submit, for regulatory authority approval, detailed surveys and baseline data to establish standards against which the requirements of paragraph (j)(1) of this section may be measured and from which the degree of material damage to the quantity and quality of surface and ground water that supply the alluvial valley floors may be assessed. The surveys and data shall include:

(A) A map, at a scale determined by the regulatory authority, showing the location and configuration of the alluvial valley floor;

(B) Baseline data covering a full water year for each of the hydrologic functions identified in paragraph (j)(1) of this section;

(C) Plans showing how the operation will avoid, during mining and reclamation, interruption, discontinuance, or preclusion of farming on the alluvial valley floors and will not materially damage the quantity or quality of water in surface and ground water systems that supply such valley floors;

(D) Historic land use data for the proposed permit area and for farms to be affected; and

(E) Such other data as the regulatory authority may require.

(ii) Surface mining operations which qualify for the exceptions in paragraph (j)(2) of this section are not required to submit the plans prescribed in paragraph (j)(3)(i)(C) of this section.

(k) *Permanent impoundments.* The permittee may construct, if authorized by the regulatory agency pursuant to this paragraph and § 177.104 permanent water impoundments on mining sites as a part of reclamation activities only when they are adequately demonstrated to be in compliance with § 177.104 and § 177.105 in addition to the following requirements:

(1) The size of the impoundment is adequate for its intended purposes.

(2) The impoundment dam construction is designed to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Pub. L. 83-566 (16 U.S.C. 1006).

(3) The quality of the impounded water will be suitable on a permanent basis for its intended use and discharges from the impoundment will not degrade the quality of receiving waters below the water quality standards established pursuant to applicable Federal and Tribal law.

(4) The level of water will be reasonably stable.

(5) Final grading will comply with the provisions of § 177.105 and will provide adequate safety and access for proposed water users.

(6) Water impoundements will not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(l) *Hydrologic impact of roads*—(1) *General.* Access and haul roads and associated bridges, culverts, ditches, and road rights-of-way shall be constructed, maintained, and reclaimed to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall the contributions be in excess of requirements set by applicable Tribal or Federal law. All access and haul roads shall be removed and the land affected regraded and revegetated consistent with the requirements of § 177.105 and § 177.110 unless retention of a road is approved as part of a post-mining land use under § 177.104 as being necessary to support the post-mining land use or necessary to adequately control erosion and the necessary maintenance is assured.

(2) *Construction.* (i) All roads, insofar as possible, shall be located on ridges or on the available flater and more stable slopes to minimize erosion. Stream fords are prohibited unless they are specifically approved by the regulatory authority as temporary routes across dry streams that will not adversely affect sedimentation and that will not be used for coal haulage. Other stream crossing shall be made using bridges, culverts or other structure designed and constructed to meet the requirements of this paragraph. Roads shall not be located in active stream channels nor shall they be constructed or maintained in a manner that increases erosion or causes significant sedimentation or flooding. However, nothing in this paragraph will be construed to prohibit relocation of stream channels in accordance with paragraph (d) of this section.

(ii) In order to minimize erosion and subsequent disturbances of the hydrologic balance, roads shall be constructed in compliance with the following grade restrictions or other grades determined by the regulatory authority to be necessary to control erosion:

(A) The overall sustained grade shall not exceed 1*v*:10*h* (10 percent).

(B) The maximum grade greater than 10 percent shall not exceed 1*v*:6.5*h* (15 percent) for more than 300 feet.

(C) There shall not be more than 300 feet of grade exceeding 10 percent within each 1,000 feet.

(iii) All access and haul roads shall be adequately drained using structures such as, but not limited to, ditches, water barriers, cross drains, and ditch relief drains. For access and haul roads that are to be maintained for more than 1 year, water-control structures shall be designed with a discharge capacity capable of passing the peak runoff from a 10-year, 24-hour precipitation event. Drainage pipe and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets. Drainage ditches shall be provided at the toe of all cut slopes formed by construction of roads. Trash racks and debris basins shall be installed in the drainage ditches wherever debris from the drainage area could impair the functions of drainage and sediment control structures. Ditch relief and cross drains shall be spaced according to grade. Effluent limitations of paragraph (a) of this section shall not apply to drainage from access and haul roads located outside the disturbed area as defined in this section unless otherwise specified by the regulatory authority.

(iv) Access and haul roads shall be surfaced with durable material. Toxic- or acid-forming substances shall not be used. Vegetation may be cleared only for the essential width necessary for road and associated ditch construction and to serve traffic needs.

(3) *Maintenance*—(i) Access and haul roads shall be routinely maintained by means such as, but not limited to, wetting, scraping or surfacing.

(ii) Ditches, culverts, drains, trash racks, debris basins and other structures serving to drain access and haul roads shall not be restricted or blocked in any manner that impedes drainage or adversley affects the intended purpose of the structure.

(m) *Hydrologic impacts of other transport facilities.* Railroad loops, spurs, sidings and other transport facilities shall be constructed, maintained and reclaimed to control diminution or degradation of water quality and quantity and to prevent additional contributions of suspended solids to streamflow, or runoff outside the permit area to the extent possible, using the best technology currently available.

In no event shall contributions be in excess of requirements set by applicable Tribal or Federal law.

(n) *Discharge of waters into underground mines.* Surface and ground waters shall not be discharged or diverted into underground mine workings.

§ 177.109 Dams constructed of or impounding waste material.

(a) *General.* No waste material shall be used in or impounded by existing or new dams without the approval of the regulatory authority. The permittee shall design, locate, construct, operate, maintain, modify, and abandon or remove all dams (used either tempo-

rarily or permanently) constructed of waste materials, in accordance with the requirements of this section.

(b) *Construction of dams.* (1) Waste shall not be used in the construction of dams unless demonstrated through appropriate engineering analysis, to have no adverse effect on stability.

(2) Plans for dams subject to this section and also including those dams that do not meet the size of other criteria of 30 CFR 77.216(a), shall be approved by the regulatory authority before construction and shall contain the minimum plan requirements established by the Mining Enforcement and Safety Administration pursuant to 30 CFR 77.216-2.

(3) Construction requirements are as follows: (i) Design shall be based on the flood from the probable maximum precipitation event unless the permittee shows that the failure of the impounding structure would not cause loss of life or severely damage property or the environment, in which case, depending on site conditions, a design based on a precipitation event of no less than 100-year frequency may be approved by the regulatory authority.

(ii) The design freeboard distance between the lowest point on the embankment crest and the maximum water elevation shall be at least 3 feet to avoid overtopping by wind and wave action.

(iii) Dams shall have minimum safety factors as follows:

Case	Loading condition	Min. safety factor
I	End of construction	1.3
II	Partial pool with steady seepage saturation	1.5
III	Steady seepage from spillway or decant crest	1.5
IV	Earthquake (cases II and III with seismic loading)	1.0

(iv) The dam, foundation, and abutments shall be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the factors of safety of the dam for all loading conditions in paragraph (b)(3)(iii) of this section and for all increments of construction.

(v) Seepage through the dam, foundation, and abutments shall be controlled to prevent excessive uplift pressures, internal erosion, sloughing, removal of material by solution, or erosion of material by loss into cracks, joints, and cavities. This may require the use of impervious blankets, previous drainage zones or blankets, toe drains, relief wells, or dental concreting of jointed rock surface in contact with embankment materials.

(vi) Allowances shall be made for settlement of the dams and the foundation so that the freeboard will be maintained.

(vii) Impoundments created by dams of waste materials shall be subject to a minimum drawdown criteria that allows the facility to be evacuated by spillways or decants of 90 percent of the volume of water stored during the design precipitation event within 10 days.

(viii) During construction of dams subject to this section, the structures shall be periodically inspected by a registered professional engineer to ensure construction according to the approved design. On completion of construction, the structure shall be certified by a registered professional engineer experienced in the field of dam construction as having been constructed in accordance with accepted professional practice and the approved design.

(ix) A permanent identification marker, at least 6 feet high that shows the dam number assigned pursuant to 30 CFR 77.216-1 and the name of the person operating or controlling the dam, shall be located on or immediately adjacent to each dam within 30 days of certification of design pursuant to this section.

(4) All dams, including those not meeting the size of other criteria of 30 CFR 77.216(a), shall be routinely inspected by a registered professional engineer, or someone under the supervision of a registered professional engineer, in accordance with Mining Enforcement and Safety Administration regulations pursuant to 30 CFR 77.216-3.

(5) All dams shall be routinely maintained. Vegetative growth shall be cut where necessary to facilitate inspec-

tion and repairs. Ditches and spillways shall be cleaned. Any combustible materials present on the surface, other than that used for surface stability such as mulch or dry vegetation, shall be removed and any other appropriate maintenance procedures followed.

(6) All dams subject to this section shall be certified annually as having been constructed and modified in accordance with current prudent engineering practices to minimize the possibility of failures. Any changes in the geometry of the impounding structure shall be highlighted and included in the annual certification report. These certifications shall include a report on existing and required monitoring procedures and instrumentation, the average and maximum depths and elevations of any impounded waters over the past year, existing storage capacity of impounding structures, any fires occurring in the material over the past year and any other aspects of the structures affecting their stability.

(7) Any enlargements, reductions in size, reconstruction or other modification of the dams shall be approved by the regulatory authority before construction begins.

(8) All dams shall be removed and the disturbed areas regraded, revegetated, and stabilized before the release of bond unless the regulatory authority approve retention of such dams as being compatible with an approved postmining land use (§ 177.104).

§ 177.110 Revegetation.

(a) *General.* (1) The permittee shall establish on all land that has been disturbed, a diverse, effective, and permanent vegetative cover of species native to the area of disturbed land or species that will support the planned postmining uses of the land approved according to § 177.104.

(2) Revegetation shall be carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with approved land uses. The vegetative cover shall be capable of stabilizing the soil surface with respect to erosion. All disturbed lands, except water areas and surface areas of roads that are approved as a part of the postmining land use, shall be seeded or planted to achieve a vegetative cover of the same seasonal variety native to the area of disturbed land. If both the pre- and postmining land use is intensive agriculture, planting the crops normally grown will meet the requirement. Vegetative cover will be considered of the same seasonal variety when it consists of a mixture of species of equal or superior utility for the intended land use when compared with the utility of naturally occurring vegetation during each season of the year.

(b) *Use of introduced species.* Introduced species may be substituted for native species only of appropriate field trials have demonstrated that the introduced species are of equal or superior utility for the approved postmining land use, or are necessary to achieve a quick, temporary, and stabilizing cover. Such species substitution shall be approved by the regulatory authority. Introduced species shall meet applicable Tribal and Federal seed or introduced species statutes, and shall not include poisonous or potentially toxic species.

(c) *Timing of revegetation.* Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally for the type of plant materials selected to meet specific site conditions and climate. Any disturbed areas, except water areas and surface areas of roads that are approved under § 177.104 as part of the postmining land use, which have been graded shall be seeded with a temporary cover of small grains, grasses, or legumes to control erosion until an adequate permanent cover is established. When rills or gullies, that would preclude the successful establishment of vegetation or the achievement of the postmining land use, form in regraded topsoil and overburden materials as specified in § 177.105, additional regrading or other stabilization practices will be required before seeding and planting.

(d) *Mulching.* Mulch shall be used on all regraded and topsoiled areas to control erosion, to promote germination of seeds, and to increase the moisture retention of the soil. Mulch shall

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be anchored to the soil surface where appropriate, to ensure effective protection of the soil and vegetation. Mulch means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth, and do not interfere with the postmining use of the land. Annual grains such as oats, rye and wheat may be used instead of mulch when it is shown to the satisfaction of the regulatory authority that the substituted grains will provide adequate stability and that they will later be replaced by species approved for the postmining use.

(e) *Methods of revegetation.* (1) The permittee shall use technical publications or the results of laboratory and field tests approved by the regulatory authority to determine the varieties, species, seeding rates, and soil amendment practices essential for establishment and self-regeneration of vegetation. The regulatory authority shall approve species selection and planting plans.

(2) Where hayland, pasture, or range is to be the postmining land use, the species of grasses, legumes, browse, trees, or forbs for seeding or planting and their pattern of distribution shall be selected by the permittee to provide a diverse, effective, and permanent vegetative cover with the seasonal variety, succession, distribution, and regenerative capabilities native to the area. Livestock grazing will not be allowed on reclaimed land until the seedlings are established and can sustain managed grazing. The regulatory authority, in consultation with the permittee and the landowner or in concurrence with the governmental land-managing agency having jurisdiction over the surface, shall determine when the revegetated area is ready for livestock grazing.

(3) Where forest is to be the postmining land use the permittee shall plant trees adapted for local site conditions and climate. Trees shall be planted in combination with an herbaceous cover of grains, grasses, legumes, forbs, or woody plants to provide a diverse, effective, and permanent vegetation cover with the seasonal variety, succession, and regeneration capabilities native to the area.

(4) Where wildlife habitat is to be included in the postmining land use, the permittee shall consult with appropriate Tribal and Federal wildlife and land management agencies and shall select those species that will fulfill the needs of wildlife, including food, water, cover, and space. Plant groupings and water resources shall be spaced and distributed to fulfill the requirements of wildlife.

(f) *Standards for measuring success of revegetation.* (1) Success of revegetation shall be measured on the basis of reference areas approved by the regulatory authority. Reference areas mean land units of varying size and shape identified and maintained under appropriate management for the purpose of measuring ground cover, productivity and species diversity that are produced naturally. The reference areas must be representative of geology, soils, slope, aspect, and vegetation in the permit area. Management of the reference area shall be comparable to that which will be required for the approved postmining land use of the area to be mined. The regulatory authority shall approve the estimating techniques that will be used to determine the degree of success in the revegetated area.

(2) The ground cover of living plants on the revegetated area shall be equal to the ground cover of living plants of the approved reference area for a minimum of two growing seasons. The ground cover shall not be considered equal if it is less than 90 percent of the ground cover of the reference area for any significant portion of the mined area. Exceptions may be authorized by the regulatory authority for:

(i) Previously mined areas that were not reclaimed to the standards required by this part prior to the effective date of these regulations. The ground cover of living plants for such areas shall not be less than required to control erosion, and in no case less than that existing before redisturbance;

(ii) Areas to be developed immediately for industrial or residential use. The ground cover of living plants shall not

be less than required to control erosion. As used in this paragraph, immediately means less than 2 years after regrading has been completed for the area to be used; and

(iii) Areas to be used for agricultural cropland purposes. Success in revegetation of crop land shall be determined on the basis of crop production from the mined area compared to the reference area. Crop production from the mined area shall be equal to that of the approved reference area for a minimum of two growing seasons. Production shall not be considered equal if it is less than 90 percent of the production of the reference area for any significant portion of the mined area.

(3) Species diversity, distribution, seasonal variety, and vigor shall be evaluated on the basis of the results which could reasonably be expected using the methods of revegetation approved under paragraph (e) of this section.

(g) *Seeding of stockpiled topsoil.* Topsoil stockpiled in compliance with § 177.107 must be seeded or planted with an effective cover of nonnoxious, quick growing annual and perennial plants during the first normal period for favorable planting conditions or protected by other approved measures as specified in § 177.107.

§ 177.111 Steep-slope mining.

(a) The permitee conducting surface coal mining and reclamation operations on natural slopes that exceed 20 degrees, or on lesser slopes that require measures to protect the area from disturbance, as determined by the regulatory authority after consideration of soils, climate, the method of operation, geology, and other regional characteristics, shall meet the following performance standards. The standards of this section do not apply where mining is done on a flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area; or where the mining removes entire coal seams running through the upper fraction of a mountain, ridge, or hill by removing all of the overburden and creating a level plateau or gently rolling contour.

(1) Spoil, waste materials or debris, including that from clearing and grubbing, and abandoned or disabled equipment, shall not be placed or allowed to remain on the downslope.

(2) The highwall shall be completely covered with spoil and the disturbed area graded to comply with the provisions of § 177.105 of this part. Land above the highwall shall not be disturbed unless the regulatory authority finds that the disturbance will facilitate compliance with the requirements of this section.

(3) Material in excess of that required to meet the provisions of § 177.105 of this part shall be disposed of in accordance with the requirements of § 177.106 of this part.

(4) Woody materials may be buried in the backfilled area only when burial does not cause, or add to, instability of the backfill. Woody materials may be chipped and distributed through the backfill when approved by the regulatory authority.

§ 177.112 Inspections.

(a) *Extent.* The authorized representatives of the Secretary shall conduct inspections of surface coal mining operations subject to regulations under the Act—

(1) On the basis of information provided by a Tribe or any person which gives rise to a reasonable belief that the provisions of the Act, regulations or permit condition required by the Act are being violated, or that a condition or practice exists which creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources; and

(2) On a random basis of at least one complete inspection each 6 months. A complete inspection is an onsite review of the operator's compliance with all applicable standards in these regulations within the entire area disturbed or affected by mining.

(b) *Right of Entry.* (1) Authorized representatives of the Secretary, without advance notice and upon presentation of appropriate credentials and without a search warrant, shall have the right of entry to, upon, or through

any surface coal mining and reclamation operations or any premises in which any records required to be maintained are located.

(2) The authorized representatives may at reasonable times, and without delay, have access to and copy any records, and inspect any monitoring equipment or method of operation required under this act, the regulations or the permit.

(c) *Inspection based on citizen requests.* (1) *Citizen reports.* (i) Any person who believes that there is a violation of the Act, regulations or permit conditions required by the Act or that any imminent danger or harm exists may report this information to the Office of Surface Mining Reclamation and Enforcement. Written reports must be signed and include a phone number where the reporting party can be contacted. Oral reports will be accepted but must be followed by a written and signed statement including the information reported. The complaint or other information shall be considered as having a reasonable basis if it alleges facts which, if proven to be true, would be sufficient to show a violation of the Act, regulations or permit. Unless the Office has reason to believe that the information is incorrect, or determines that even if true it would not constitute a violation, the Office shall conduct an inspection within 15 days of receipt of the complaint. If the complaint alleges an imminent danger or harm, the inspection shall be conducted promptly.

(ii) The identity of any person supplying information to the Office relating to possible violations or imminent dangers or harms shall remain confidential with the Office, if requested by the person supplying the information, unless disclosure is required under the Freedom of Information Act (5 U.S.C. 552) or by other Federal law.

(2) *Right to Accompany the Authorized Representative of the Secretary.* (i) If a Federal inspection is conducted as a result of information provided to the Office, the person who provided the information shall be notified when the inspection is to occur and the person will be allowed to accompany the authorized representative of the Secretary during the inspection.

(ii) Any person accompanying an authorized representative of the Secretary has a right of entry to, upon and through the mining and reclamation operations about which he supplied information, only if he is in the presence of and is under the control, direction and supervision of the authorized representative while on the mine property.

(3) *Notification of Results of Investigation.* Within 10 days of the inspection or, if no inspection, within 15 days of the complaint, the Office shall notify the person in writing of the following—

(i) The results of the investigation, including a description of any inspection which occurred and any enforcement action taken; copies of Federal inspection reports, notices of violation, and cessation orders may be forwarded to the person in satisfaction of this requirement.

(ii) If no inspection was conducted, an explanation of the reason for not inspecting.

(iii) A statement as to the person's right to informal review of the actions or inactions of the Office.

(iv) The permittee shall receive copies of all such reports which have not already been given to the permittee, except that the name of the complainant shall be removed.

(4) *Review of Action of Local Offices.* A person who does not agree with the action taken by the Office on their report may request the Regional Director to review the complaint and actions taken. The Regional Director shall advise the person in writing, within 30 days, of the results of the review. Informal review under this subsection shall not affect any rights to formal review or a citizen's suit.

(d) *Failure to Give Notice and Lack of Reasonable Belief.* No notice of violation or cessation order may be vacated by reason of failure to give notice required by the Act, or these regulations prior to the inspection; or by reason of a subsequent determination that prior to the inspection the Office did not have information sufficient to create a reasonable belief that a violation had occurred.

(e) *Tribal involvement.* (1) Whenever an authorized representative of

the Secretary decides to conduct an inspection of any coal mining operation or any premises in which any records to be maintained are located, the appropriate representative of the local governing Indian Tribe shall be notified and invited to accompany the Secretary's representative on such an inspection.

(2) An Indian Tribe, or its authorized representatives, shall be entitled to all the protections of paragraph (c) of this section.

§ 177.113 Enforcement procedures.

(a) *Imminent Dangers and Harms.* (1) If an authorized representative of the Secretary finds conditions or practices, or violations of applicable performance standards, which create an imminent danger to the health or safety of the public, the authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or that portion of the operation relevant to the condition, practice, or violation.

(2) If an authorized representative of the Secretary finds conditions or practices, or violations of applicable performance standards, which are causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or that portion of the operation relevant to the condition, practice, or violation.

(3) An authorized representative of the Secretary shall impose affirmative obligations on an operator which the authorized representative deems necessary to abate the condition, practice, or violation if—

(i) A cessation order is issued under paragraph (a) (1) or (2) of this section; and

(ii) The cessation of mining or reclamation activities will not completely abate the imminent danger or harm or eliminate the practices or conditions that contributed to the imminent danger or harm.

(4) When imposing affirmative obligations under this section, the authorized representative of the Secretary shall require abatement of the imminent danger or harm in the most expeditious manner physically possible. The affirmative obligation shall include a time by which abatement shall be accomplished and may include, among other things, the use of existing or additional personnel and equipment.

(5) Reclamation operations not directly the subject of the order or affirmative obligation shall continue during any cessation order.

(6) An authorized representative of the Secretary shall terminate a cessation order issued under paragraph (a) (1) or (2) of this section by written notice when the authorized representative determines that the conditions or practices or violations that contributed to the imminent danger to life or the environment have been eliminated.

(b) *Non-Imminent Danger or Harm.* (1) If an authorized representative of the Secretary finds a violation which is not covered by paragraph (a), the authorized representative shall issue a notice of violation fixing a reasonable time for abatement.

(2) An authorized representative of the Secretary may extend the time to abate a violation by written notice if the failure to abate within the time set was not caused by the permittee's lack of diligence.

(3) An authorized representative of the Secretary may establish interim steps in an abatement period. If the permittee fails to meet any interim step within the time set, the authorized representative may extend the time set for meeting the interim step, in accordance with this section, or may issue a cessation order pursuant to paragraph (c).

(4) The total time for abatement as originally fixed and subsequently extended shall not exceed 90 days.

(c) *Failure to Abate.* An authorized representative of the Secretary shall order cessation of surface coal mining and reclamation operations, or the portion relevant to the violation, when a notice of violation has been issued under paragraph (b) and the permittee fails to abate the violation within the time originally fixed or subsequently extended. In a cessation order issued under this subsection, the au-

thorized representative shall impose affirmative obligations to abate the violation in the manner provided in § 722.11 of this part. Reclamation operations not directly the subject of the order or affirmative obligation shall continue during any cessation order. A cessation order issued under this subsection shall be terminated as provided in paragraph (a).

(d) *Service of Notice.* Notices and orders issued under this part shall be given to the permittee or his designated agent. If no designated agent is found at the mine site, service will be made upon the person who, based on reasonable inquiry by the authorized representative of the Secretary, appears to be in charge of the mining or reclamation operation. The person receiving service shall be responsible for any immediate compliance actions required by the notice or order. Service is complete on delivery at the mine. However, a copy of each notice or order shall be mailed to the permittee within 48 hours.

(e) *Review at Minesite of Cessation Orders.* (1) Within 30 days after the permittee has received any cessation order issued under this part, a representative of the Office, may conduct an informal hearing at the minesite or within such reasonable proximity to the mine that it may be visited during the conduct of the hearing. No hearing will be required where the condition, practice, or violation in question has been abated or the permittee waives the hearing. If no hearing is held because of a waiver, the cessation order shall not expire.

(2) Any request made to the Office for a substantial modification or vacation of a cessation order shall be deemed a request for an informal hearing under this paragraph.

(3) Notice of the time, place and subject matter of the hearing shall be given to the permittee, any citizen who filed a report which led to the cessation order to be reviewed, and appropriate officials of the local governing Indian Tribe. Notice of the hearing also shall be posted at the appropriate district or field office and at the minesite, and, to the extent possible, in a newspaper in the area of the mine.

(4) The requirements of section 554 of Title 5 of the United States Code shall not govern the conduct of the hearings required by this paragraph. The representative of the Office may accept oral or written arguments and any other relevant information from any person attending.

(5) Within 15 days of the close of the informal hearing, the Office shall affirm, modify, or vacate the order. The decision shall be in writing and shall be sent to the permittee, any citizen who filed a report which led to the cessation order reviewed, and the appropriate agency of the local governing Indian Tribe.

(6) Informal review under this subsection shall not affect the rights of any person to request formal review under section 525(a)(1) of the Act. A request for informal review under this section of the Act shall not affect the 30-day time period for filing a request for formal review.

(f) *Pattern of Violations.* (1) The regulations of this paragraph set forth the procedures governing the suspension or revocation of permits and rights to mine under this Act based on a pattern of violations arising during Federal inspections during the initial regulatory program.

(2) *Definitions.* As used in this paragraph—

(i) *"Violations of the same or related requirements of the Act, regulations or permit conditions"* means noncompliance with any single section of this part.

(ii) *"Violations of different requirements of the Act, regulations, or permit conditions"* means noncompliance with different sections of this part.

(iii) *"Unwarranted failure to comply"* means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of the Act or these regulations due to indifference, lack of diligence, lack of reasonable care; or the failure to abate any violation of such permit, the Act or regulations due to indifference, lack of diligence, or lack of reasonable care.

(iv) *"Willful violation"* means an intentional action or omission which vio-

lates the Act, regulations or permit conditions required under the Act.

(v) *"Inspection"* as used in this paragraph means any visit to the mine.

(3) *Order to show cause.* (i) If the Director determines that a pattern of violations of any requirements of the Act, the regulations, or a permit condition imposed under the Act or regulations exists, or has existed, and that such violations are caused by the unwarranted failure of the permittee or were willful violations, the Director shall issue an order to the permittee to show cause why the permit should not be suspended or revoked.

(ii) The Director may determine that a pattern of violations exists or has existed, after considering the circumstances, including—

(A) The number of willful violations or violations caused by unwarranted failure to comply with the same or related requirements of the Act, regulations, or permit conditions during two or more Federal inspections;

(B) The number of willful violations or violations caused by unwarranted failure to comply with different requirements of the Act, regulations, or permit conditions; and

(C) The extent to which the violations were isolated departures from lawful conduct.

(iii) Violations of the same or related requirements of the Act, regulations, or permit conditions required by the Act during three or more Federal inspections within any 12-month period which were either caused by the unwarranted failure of the permittee to comply with the Act, the regulations or permit conditions required by the Act, or were willful violations, shall constitute a pattern of violations. A show cause order shall issue unless the Director finds that it would not further enforcement of the performance standards of the Act.

(4) *Suspension of revocation of permit.* (i) The order to show cause shall be issued and a public hearing, if requested, shall be conducted under the procedures of 43 CFR Part 4.

(ii) If the Secretary finds that a pattern of violations exists or has existed, the permit and right to mine under this Act shall be either suspended or revoked and the permittee directed to complete necessary corrective measures and reclamation operations.

(g) *Inability to Comply.* (1) Neither a notice of violation nor a cessation order issued under this part may be vacated because of inability to comply.

(2) A permittee may not be deemed to have shown good cause for not suspending or revoking a permit by showing inability to comply.

(3) Unless caused by lack of diligence, inability to comply may be considered in mitigation of the amount of a civil penalty under § 177.114 and of the duration of the suspension of the permit under paragraph (f) of this section.

(h) *Other remedies preserved.* No provision in this section shall be interpreted as replacing or susperseding any other remedies of the Indian mineral owner as set forth in the contract or otherwise available at law.

(i) With respect to coal leases issued on Indian lands after August 3, 1977, the Secretary shall enforce terms and conditions in addition to those required by this subpart, as may be requested by the Indian Tribe in such leases.

§ 177.114 Civil penalties.

(a) *Scope.* This section covers the assessment of civil penalties for violations of a permit condition, or any provision of the regulations in this subpart. This section governs when a civil penalty is assessed and how the amount is determined and sets forth applicable procedures. This section applies to cessation orders and notices of violation issued to permittees or operators under § 177.113 during a Federal inspection.

(b) *When assessment made.* (1) The Office will review each notice of violation and cessation order in accordance with the assessment procedures described in this section to determine whether a civil penalty will be assessed, the amount of the penalty and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

(2) The Office shall assess a civil penalty for each violation contained in a cessation order.

(3) In determining whether to assess a civil penalty for a violation not covered by paragraph (b)(2) above, the Office shall consider—

(i) The permittee's history of previous violations at the particular coal mining operation;

(ii) The seriousness of the violation;

(iii) Whether the permittee is negligent; and

(iv) The demonstrated good faith of the permittee in attempting to achieve rapid compliance after notification of the violation. The Office shall make this determination by use of a point system described in paragraph (c) of this section.

(c) *Whether to assess after a notice of violation.* (1) *General.* The Office shall determine whether to assess a penalty following the issuance of a notice of violation by a point system that takes into account the four criteria in paragraph (b)(3) of this section. Points are assigned based on each of the four criteria. If the total is more than 30 points, a penalty shall be assessed.

(2) *History of previous violations.* The Office shall assign one point for each past violation, and five points for each past cessation order issued as a result of a violation at the particular coal mining operation, up to a maximum of 30 points. Each violation which underlies a cessation order shall be counted separately from the cessation order itself. For purposes of history of previous violations, all violations and cessation orders issued within one year preceding the violation under consideration shall be counted unless—

(i) The violation of cessation order is the subject of pending administrative or judicial review or;

(ii) The violation or cessation order has been vacated because of a determination that the violation did not occur. In the event that administrative or judicial review is sought, the period of time during which the contested notice or order was under review shall not be counted in computing the 1-year period preceding the notice or order. The Office shall count each violation without regard to whether it led to a civil penalty assessment.

(3) *Seriousness.* The Office shall assign up to 30 points based on the seriousness of the violation according to the following schedules:

(i) *Probability of occurrence.* The probability of the occurrence of the event which a violated standard is designed to prevent may account for a maximum of 15 penalty points. (An example of the concept of the phrase "the event which a violated standard is designed to prevent" is as follows: Mishandling of topsoil is a violation of the topsoil standard in § 177.107 of this part; however, delay or failure in the revegetation and resulting environmental harm are the events which the topsoil standard in § 177.107 of this part is designed to prevent.) The Office shall use the following definitions and schedules—

Probability of occurrence	*Points*
None or insignificant	0- 5
Unlikely	5-10
Likely	10-15
Occurred	15

(ii) *Extent of potential or actual damage.* The extent of the potential or actual damage in terms of area and impact on the public or environment may account for a maximum of 15 penalty points based on the following—

(A) If the damage or impact which the violated standard is designed to prevent would remain within the permit area (or in the case of a deep mine, the area of surface structures), the Office shall assign zero to seven points depending on the duration and extent of the damage or impact.

(B) If the damage or impact against which the violated standard is designed to prevent would extend outside the permit area (or in the case of a deep mine, the area of surface structures), the Office shall assign eight to fifteen points depending on the duration and extent of the damage or impact.

(iii) In the case of a violation of a requirement of the Act, the regulations, or a permit to keep records, give notice, or conduct any measuring or monitoring, the Office may, as an alternative to the use of paragraphs (c)(3)(i) and (3)(ii) above assign up to 15 points for seriousness based upon the

extent to which enforcement is obstructed by the violation.

(4) *Negligence.* (i) The Office shall assign up to 25 points based on the degree of fault of the permittee, either through act or omission, in causing or failing to correct the condition or practice which is a violation. A violation which occurs through no negligence shall not be assigned penalty points for negligence. A violation which is caused by negligence shall be assigned 12 points or less depending on the degree of negligence. A violation which occurs through a greater degree of fault than negligence shall be assigned 13 through 25 penalty points depending on the degree of fault.

(ii) In determining the degree of negligence involved in a violation and the number of penalty points to be assigned, the following definitions apply—

(A) *No negligence* means an inadvertent violation of the Act, regulations or permit conditions which was unavoidable by the exercise of reasonable care.

(B) *Negligence* means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of the Act or the regulations due to indifference, lack of diligence, or lack of reasonable care, or the failure to correct any violation of such permit or the Act or the regulations due to indifference, lack of diligence or lack of reasonable care.

(C) Examples of greater degree of fault than negligence are reckless, knowing or intentional conduct.

(iii) In calculating points to be assigned for negligence, the actions of all persons working on the mine site shall be attributed to the permittee or operator.

(5) *Good faith in attempting to achieve compliance.* (i) The Office shall subtract or add points based on the degree of good faith of the permittee in attempting to achieve rapid compliance after notification of the violation. The points shall be assigned according to the following schedule—

Degree of good faith	*Points*
Rapid	−10
Normal	0
Lack of good faith	10

(ii) In determining the permittee's degree of good faith in attempting to achieve rapid compliance, the following definitions apply—

(A) *Rapid compliance* means that the permittee took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement.

(B) *Normal compliance* means the permittee abated the violation within the time given for abatement.

(C) *Lack of good faith* means the permittee did not show diligence in attempting to abate the violation and the violation was not timely abated.

(iii) If the consideration of this criteria is impractical because of the length of the abatement period, the assesssment may be made without considering this criteria. Any such assessment may be reconsidered upon the permittee's request after abatement is completed.

(d) *Determination of amount of penalty.* The Office shall determine the amount of any civil penalty by converting the total number of points assigned under paragraph (c) of this section to a dollar amount according to the following schedule:

1—$20	19—$380	37—$1,700	55—$3,500
2—40	20—400	37—1,800	56—3,600
3—60	21—420	39—1,900	57—3,700
4—80	22—440	40—2,000	58—3,800
5—100	23—460	41—2,100	59—3,900
6—120	24—480	42—2,200	60—4,000
7—140	25—500	43—2,300	61—4,100
8—160	26—600	44—2,400	62—4,200
9—180	27—700	45—2,500	63—4,300
10—200	28—800	46—2,600	64—4,400
11—220	29—900	47—2,700	65—4,500
12—240	30—1,000	48—2,800	66—4,600
13—260	31—1,100	49—2,900	67—4,700
14—280	32—1,200	50—3,000	68—4,800
15—300	33—1,300	51—3,100	69—4,900
16—320	34—1,400	52—3,200	70 and above—5,000
17—340	35—1,500	53—3,300	
18-360	36—1,600	54—3,400	

(e) *Assessment of separate violations for each day.* (1) If a cessation order is issued for failure to abate a violation within the time set in a prior notice of violation the Office shall assess separately each day the violation underlying the cessation order remains unabated following expiration of the abatement period in the notice of violation. The daily penalty shall be the amount assessed for the violation or $750.00, whichever is greater. The

daily assessment of a penalty shall not be made for any period that the obligation to abate is suspended.

(2) The Office may assess separately each day of any continuing violation. In making this determination, the Office may consider the factors listed in paragraph (b) of this section and any economic benefit to the permittee which resulted from a failure to comply.

(3) The Office shall separately assess a minimum of 2 days for any continuing violation which is assigned more than 70 points under paragraph (c) of this section.

(f) *Waiver of use of formula to determine civil penalty.* The Director, upon his own initiative or upon written request received within the time set in paragraph (g) of this section, may elect to waive in whole or in part the use of the formula contained in this part in determining the civil penalty for violation of the Act, if he determines that a waiver will further abatement of violations of the Act. A grant or denial of a waiver may be reversed by the Office of Hearings and Appeals, if such grant or denial is determined to be an abuse of discretion.

(g) *Procedures for assessment of civil penalties.* (1) Within 10 days of service of a notice or order, the permittee may submit information in writing pertaining to the violation involved to the Assessment Office and to the inspector who issued the notice or order. The Office shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

(2) The Office shall serve the permittee by certified mail, return receipt requested within 30 days of the issuance of the notice or order, with a copy of the proposed assessment and of the worksheets showing the computation.

(h) *Procedure for conference.* (1) If a written request from the permittee is received within 15 days from receipt of a proposed assessment, the Office shall arrange for a conference to review the assessment. The permittee may submit additional material for consideration during the conference. The Office may contact the permittee to discuss the assessment prior to the conference if necessary to expedite the review.

(2) The Office shall consider all relevant information on the violation in question presented by the permittee and may recalculate either up or down or vacate the proposed penalty. No information as to which the permittee claims confidentially shall be considered as a basis for reduction of a proposed assessment. When new facts warrant the imposition of a higher penalty, it shall be proposed in the manner provided in paragraph (f) of this section. Every change in a proposed assessment shall be fully documented in the file including a written explanation of the reason the penalty has changed.

(3) Notice of the time and place of the conference shall be posted at the Office of Surface Mining Reclamation and Enforcement field office with jurisdiction over the mine at least 5 days prior to the conference. Any person shall have a right to attend the conference and participate.

(4) If the issues are resolved, the agreement shall be in writing and signed by the party assessed and the representative of the Office. If payment is not received within 30 days the office may:

(i) Enter the agreed upon amount as a final order of the Secretary; or

(ii) Rescind the agreement and reinstate the original proposed assessment.

(5) A reduction of a proposed civil penalty assessment of more than 25 percent and more than $500 agreed to during a conference shall be approved by the Director or his designee before it is final and binding on the Secretary.

(i) *Request for hearing.* (1) Within 30 days from receipt of the proposed assessment, the permittee may request a hearing before the Office of Hearings and Appeals by filing a petition and tendering full payment of the proposed assessment to be held in escrow.

(2) The timely filing of a request for a conference under paragraph (h) of this section suspends the running of the 30-day period for requesting a hearing. The suspension shall continue until the completion of the conference, which shall be held within 60

days from the date of the request for the conference. The permittee shall have 15 days after completion of the conference or after any disapproval by the Director or his designee under paragraph (h)(5) of this section, whichever occurs later, to request a public hearing.

(3) The Office of Hearings and Appeals conducts the hearings and issues orders or otherwise terminates the petition pursuant to its procedures in 43 CFR Part 4. The Office of Hearings and Appeals may determine whether a violation occurred. When determining the amount of the penalty, the Office of Hearings and Appeals shall use the point system and conversion table contained in this Part, except in cases in which the Office has waived the use of the point system and conversion table pursuant to paragraph (f) of this section.

(j) *Availability of records.* All records and files created or used in the assessment process under this Part shall be available for public inspection.

(k) *Notice to Tribe.* Appropriate officials of the local governing Indian Tribe shall be notified of any hearings or conferences conducted pursuant to this section, and shall be invited to attend.

PART 178—MANAGEMENT OF TRIBAL ASSETS OF UTE INDIAN TRIBE, UINTAH AND OURAY RESERVATION, UTAH, BY THE TRIBE AND THE UTE DISTRIBUTION CORP.

Sec.

178.1 Definitions.
178.2 Authority and purpose.
178.3 Referral of questions by superintendent.
178.4 Referral of questions by the joint managers.
178.5 Management decisions.
178.6 Method of casting votes.
178.7 Implementation of decision.

AUTHORITY: Secs. 27 and 28 of the Act of August 27, 1954, 68 Stat. 868 (25 U.S.C. 677-677aa); 5 U.S.C. 301; secs. 463, 465 of the Revised Statutes (25 U.S.C. 2 and 9) and 230 DM 1 and 2.

SOURCE: 43 FR 40458, Sept. 12, 1978, unless otherwise noted.

§ 178.1 Definitions.

As used in this part:

"Assets" means all unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets of the Ute Tribe of Uintah and Ouray Reservation as constituted on August 27, 1954, not distributed in accordance with the terms of the Ute Partition Act.

"Business Committee" means the Uintah and Ouray Tribal Business Committee, created pursuant to the provisions of the constitution and bylaws of the Ute Indian Tribe of the Uintah and Ouray Reservation.

"Board of directors" means the board of directors of the Ute Distribution Corp., a corporation organized and existing under the laws of the State of Utah.

"Joint manager" or "joint managers" means the business committee and the board of directors, or either of them, as is appropriate, within the context where one of those terms is used.

"Superintendent" means the superintendent of the Uintah and Ouray Agency, Bureau of Indian Affairs.

"Secretary" means the secretary of the Interior or a subordinate official acting pursuant to authority delegated by said Secretary.

§ 178.2 Authority and purpose.

In accordance with the Ute Partition Act approved August 27, 1954 (68 Stat. 868; 25 U.S.C. 677-677aa), as amended by the Act of August 2, 1956 (70 Stat. 936), and the Act of September 25, 1962 (76 Stat. 597), assets shall be managed jointly by the business committee and the board of directors. These regulations set out the procedures for exercising such joint management.

§ 178.3 Referral of questions by superintendent.

The superintendent shall refer all questions and problems related to the management of the assets as they come to his attention, together with his analysis of alternative solutions to each question or problem, to the business committee and to the board of directors for resolution. Such referrals shall be in writing and shall be addressed to the joint managers at such

addresses as they furnish to the superintendent and to each other from time to time.

§ 178.4 Referral of questions by the joint managers.

The business committee and the board of directors must refer to each other for resolution any questions or problems related to joint management of the assets which they from time to time determine need to be resolved together with the submitting party's proposal, if any, for solution. Such referrals shall be in writing, addressed to the other joint manager at the address furnished in accordance with section 178.3 of this part. Copies of all such referrals shall also be furnished to the superintendent. Either of the parties may request an analysis of alternative solutions of each question or problem referred pursuant to this section, and the superintendent will furnish such analysis within ten working days, or within such longer period as he may notify the parties is required to prepare such analysis.

§ 178.5 Management decisions.

In arriving at management decisions concerning the assets, the business committee shall be entitled to cast 72.83814 votes and the board of directors shall be entitled to cast 27.16186 votes. Any total number of votes cast exceeding 50 shall be sufficient to determine an issue submitted to the joint managers for resolution. A majority of votes cast will decide an issue.

§ 178.6 Method of casting votes.

Within 30 days after an issue and any analysis provided for in §§ 178.4 and 178.5 have been submitted to the joint managers for resolution, they shall each notify the superintendent in writing of the number of votes cast for and against the proposed or alternative solutions. If either of the joint managers fails or refuses to cast his votes and to notify the superintendent thereof within the time specified, the superintendent may conclude that such joint managers' votes have been cast against the proposed solution or solutions; or, if no solutions have been proposed, for the maintenance of the status quo. At the time they notify the superintendent of the votes cast on an issue, each joint manager shall furnish to the superintendent a certified copy of a resolution of the business committee or the board of directors, as the case may be, authorizing such vote.

§ 178.7 Implementation of decision.

The Secretary shall issue such documents as are necessary or expendient to implement the decisions of the joint managers, insofar as such issuance is authorized by law, and he shall execute and/or approve such documents for and on behalf of the joint managers, or either of them, and on behalf of the United States, as necessary. If it becomes necessary for the Secretary to execute an instrument on behalf of one or both of the joint managers and to approve the same instrument as trustee, two different officials having delegated authority from the Secretary shall serve as executing and approving officers, respectively.

SUBCHAPTER Q—OIL AND GAS

PART 183—LEASING OF OSAGE RESERVATION LANDS FOR OIL AND GAS MINING

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AUTHORITY: Sec. 3, 34 Stat. 543. Interpret or apply secs. 1, 2, 45 Stat. 1478, 1479.

SOURCE: 39 FR 22254, June 21, 1974, unless otherwise noted.

§ 183.1 Definitions.

As used in this Part 183, terms shall have the meanings set forth in this section.

(a) "Secretary" means the Secretary of the Interior or his authorized representative acting under delegated authority.

(b) "Osage Tribal Council" means the duly elected governing body of the Osage Nation or Tribe of Indians of Oklahoma vested with authority to lease or take other actions on oil and gas mining pertaining to the Osage Mineral Estate.

(c) "Superintendent" means the Superintendent of the Osage Agency, Pawhuska, Oklahoma, or his authorized representative acting under delegated authority.

(d) "Oil lessee" means any person, firm, or corporation to whom an oil mining lease is made under the regulations in this part.

(e) "Gas lessee" means any person, firm, or corporation to whom a gas mining lease is made under the regulations in this part.

(f) "Oil and gas lessee" means any person, firm, or corporation to whom an oil and gas mining lease is made under the regulations in this part.

(g) "Primary term" means the basic period of time for which a lease is issued during which the lease contract may be kept in force by payment of rentals.

(h) "Major purchaser" means any one of the minimum number of purchasers taking 80 percent of the oil in the Kansas-Oklahoma area.

(i) "Casinghead gas" means gas produced from an oil well as a consequence of oil production from the same formation.

(j) "Natural gas" means any fluid, either combustible or noncombustible, recovered at the surface in the gaseous phase and/or hydrocarbons recovered at the surface as liquids which are the result of condensation caused by reduction of pressure and temperature of hydrocarbons originally existing in a reservoir in the gaseous phase.

(k) "Authorized representative" of an oil lessee, gas lessee, or oil and gas lessee means any person, group, or groups of persons, partnership, association, company, corporation, organization or agent employed by or contracted with a lessee or any subcontractor to conduct oil and gas operations or provide facilities to market oil and gas.

(l) "Oil well" means any well which produces one (1) barrel or more of crude petroleum oil for each 15,000 standard cubic feet of natural gas.

(m) "Gas well" means any well which:

(i) Produces natural gas not associated with crude petroleum oil at the time of production or

(ii) Produces more than 15,000 standard cubic feet of natural gas to each barrel of crude petroleum oil from the same producing formation.

[39 FR 22254, June 21, 1974, as amended at 41 FR 50648, Nov. 17, 1976; 43 FR 8135, Feb. 28, 1978]

Leasing Procedure, Rental and Royalty

§ 183.2 Sale of leases.

(a) Written application, together with any nomination fee, for tracts to be offered for lease shall be filed with the Superintendent.

(b) The Superintendent, with the consent of the Osage Tribal Council, shall publish notices for the sale of oil leases, gas leases, and oil and gas leases to the highest responsible bidder on specific tracts of the unleased Osage Mineral Estate. The Superintendent may require any bidder to submit satisfactory evidence of his good faith and ability to comply with all provisions of the notice of sale. Successful bidders must deposit with the Superintendent on day of sale a check or cash in an amount not less than 25 percent of the cash bonus offered as a guaranty of good faith. Any and all bids shall be subject to the acceptance of the Osage Tribal Council and approval of the Superintendent. Within 20 days after notification of being the successful bidder, and said bidder must submit to the Superintendent the balance of the cash bonus, a $10 filing fee, and the lease in completed form. The Superintendent may extend the time for the completion and submission of the lease form, but no extension shall be granted for remitting the balance of moneys due. If the bidder fails to pay the full cash consideration within said period or fails to file the completed lease within said period or extention thereof, or if the lease is rejected through no fault of the Osage Tribal Council or the Superintendent, 25 percent of the cash bonus bid will be forfeited for the use and benefits of the Osage Tribe. The Superintendent may reject a lease made on an accepted bid, upon evidence satisfactory to him of collusion, fraud, or other irregularity in connection with the notice of sale. The Superintendent may approve oil leases, gas leases, and oil and gas leases made by the Osage Tribal Council in conformity with the notice of sale, regulations in this part, bonds, and other instruments required.

(c) Each oil and/or gas lease and activities and installations associated therewith subject to these regulations shall be assessed and evaluated for its environmental impact prior to its approval by the Superintendent.

(d) Lessee shall accept a lease with the understanding that a mineral not covered by his lease may be leased separately.

(e) No lease, assignment thereof, or interest therein will be approved to any employee or employees of the

Government and no such employee shall be permitted to acquire any interest in leases covering the Osage Mineral Estate by ownership of stock in corporations having leases or in any other manner.

(f) The Osage Tribal Council may utilize the following procedures among others, in entering into a mining lease. A contract may be entered into through competitive bidding as outlined in Sec. 183.2(b), negitiation, or a combination of both. The Osage Tribal Council may also request the Superintendent to undertake the preparation, advertisement and negitiation. The Superintendent may approve any such contract made by the Osage Tribal Council.

[39 FR 22254, June 21, 1974, as amended at 43 FR 8135, Feb. 28, 1978]

§ 183.3 Surrender of lease.

Lessee may, with the approval of the Superintendent and payment of a $10 filing fee, surrender all or any portion of any lease, have the lease cancelled as to the portion surrendered and be relieved from all subsequent obligations and liabilities. If the lease, or portion being surrendered, is owned in undivided interests by more than one party, then all parties shall join in the application for cancellation: *Provided*, That if this lease has been recorded, Lessee shall execute a release and record the same in the proper office. Such surrender shall not entitle Lessee to a refund of the unused portion of rental paid in lieu of development, nor shall it relieve Lessee and his sureties of any obligation and liability incurred prior to such surrender: *Provided further*, That when there is a partial surrender of any lease and the acreage to be retained is less than 160 acres or there is a surrender of a separate horizon, such surrender shall become effective only with the consent of the Osage Tribal Council and approval of the Superintendent.

[43 FR 8135, Feb. 28, 1978]

§ 183.4 Form of payment.

Sums due under a lease contract and/or the regulations in this part shall be paid by cash or check made payable to the Bureau of Indian Affairs and delivered to the Osage Agency, Pawhuska, Oklahoma 74056. Such sums shall be a prior lien on all equipment and unsold oil on the leased premises.

§ 183.5 Leases subject to current regulations.

Leases issued pursuant to this part shall be subject to the current regulations of the Secretary, all of which are made a part of such leases: *Provided*, That no amendment or change of such regulations made after the approval of any lease shall operate to affect the term of the lease, rate of royalty, rental, or acreage unless agreed to by both parties and approved by the Superintendent.

§ 183.6 Bonds.

Lessees shall furnish with each lease a corporate surety bond acceptable to the Superintendent as follows:

(a) A bond on Form D shall be filed with each lease submitted for approval. Such bond shall be in the penal sum of not less than $2,500 for each quarter section or fractional quarter section covered by said lease: *Provided, however*, That one bond in the penal sum or not less than $50,000 may be filed on Form G covering all leases on the Osage Mineral Estate not in excess of 10,240 acres to which Lessee is or may become a party.

(b) In lieu of the bonds required under paragraph (a) of this section, a bond in the penal sum of $150,000 may be filed on Form 5-5438 for full nationwide coverage of all leases, without geographic or acreage limitation, to which the Lessee is or may become a party.

(c) A bond on Form H shall be filed in the penal sum of not less than $2,500 covering a lease acquired through assignment where the assignee does not have a collective bond, or the corporate surety does not execute its consent to remain bound under the original bond given to secure the faithful performance of the terms and conditions of the lease.

(d) The right is specifically reserved to increase the amount of bonds prescribed in paragraphs (a) and (c) of this section in any particular case when the Superintendent deems it

proper. The nationwide bond may be increased at any time in the discretion of the Secretary.

[39 FR 22254, June 21, 1974, as amended at 43 FR 8135, Feb. 28, 1978; 43 FR 11815, Mar. 22, 1978]

§ 183.7 Provisions of forms made a part of the regulations.

Leases, assignments, and supporting instruments shall be in the form prescribed by the Secretary, and such forms are hereby made a part of the regulations.

§ 183.8 Corporation and corporate information.

(a) If the applicant for a lease is a corporation, it shall file evidence of authority of its officers to execute papers; and with its first application it shall also file a certified copy of its Articles of Incorporation and, if foreign to the State of Oklahoma, evidence showing compliance with the corporation laws thereof.

(b) Whenever deemed advisable the Superintendent may require a corporation to file any additional information necessary to carry out the purpose and intent of the regulations in this part, and such information shall be furnished within a reasonable time.

§ 183.9 Rental and drilling obligations.

(a) Oil leases, gas leases, and combination oil and gas leases. Unless Lessee shall complete and place on production a well producing and selling oil and/or gas in paying quantities on the land embraced within the lease within 12 months from the date of approval of the lease, or as otherwise provided in the lease terms, or 12 months from the date the Superintendent consents to drilling on any restricted homestead selection, the lease shall terminate unless rental at the rate of not less than $1 per acre for an oil or gas lease, or not less than $2.00 per acre for a combination oil and gas lease, shall be paid before the end of the first year of the lease. The lease may also be held for the remainder of its primary term without drilling upon payment of the specified rental annually in advance, commencing with the second lease year. The lease shall terminate as of the due date of the rental unless such rental shall be received by the Superintendent, or shall have been mailed as indicated by postmark on or before said date. The completion of a well producing in paying quantities shall, for so long as such production continues, relieve Lessee from any further payment of rental, except that should such production cease during the primary term the lease may be continued only during the remaining primary term of the lease by payment of advance rental which shall commence on the next anniversary date of the lease. Rental shall be paid on the basis of a full year and no refund will be made of advance rental paid in compliance with the regulations in this part: *Provided*, That the Superintendent in his discretion may order further development of any leased acreage or separate horizon if, in his opinion, a prudent operator would conduct further development. If Lessee refuses to comply, the refusal will be considered a violation of the lease terms and said lease shall be subject to cancellation as to the acreage or horizon the further development of which was ordered: *Provided further*, That the Superintendent may impose restrictions as to time of drilling and rate of production from any well or wells when in his judgment, such action may be necessary or proper for the protection of the natural resources of the leased land and the interests of the Osage Tribe. The superintendent may consider, among other things, Federal and Oklahoma laws regulating either drilling or production. If a lessee holds both an oil lease and a gas lease covering the same acreage, such lessee is subject to the provisions of this section as to both the oil lease and the gas lease.

(b) The Superintendent may, with the consent of and under terms approved by the Osage Tribal Council, grant an extension of the primary term of a lease on which the actual drilling of a well shall have commenced within the term thereof or for the purpose of enabling Lessee to obtain a market for his oil and/or gas production.

[43 FR 8135, Feb. 28, 1978]

§ 183.10 Term of lease.

Leases issued hereunder shall be for a primary term as established by the Osage Tribal Council, approved by the Superintendent, and so stated in the notice of sale of such leases and so long thereafter as the minerals specified are produced in paying quantities.

[43 FR 8136, Feb. 28, 1978]

§ 183.11 Royalty payments.

(a) *Royalty on oil*—(1) *Royalty rate.* Lessee shall pay or cause to be paid to the Superintendent, as royalty, the sum of not less than 16⅔ percent of the gross proceeds from sales after deducting the oil used by Lessee for development and operation purposes on the lease: *Provided*, That when the quantity of oil taken from all the producing wells on any quarter-section or fraction thereof, according to the public survey, during any calendar month is sufficient to average one hundred or more barrels per active producing well per day the royalty on such oil shall be not less than 20 percent. The Osage Tribal Council may, upon presentation of justifiable economic evidence by Lessee, agree to a revised royalty rate subject to approval by the Superintendent, applicable to additional oil produced from a lease or leases by enhanced recovery methods, which rate shall not be less than 12½ percent of the gross proceeds from sale of oil produced by enhanced recovery processes, other than gas injection, after deducting the oil used by Lessee for development and operating purposes on the lease or leases.

(2) Unless the Osage Tribal Council, with approval of the Secretary, shall elect to take the royalty in kind, payment shall be made at the time of sale or removal of the oil, except where payments are made on division orders, and settlement shall be based on the actual selling price, or the highest posted or offered price by a major purchaser in the Kansas-Oklahoma area whichever is higher on the day of the sale or removal. Where different prices are paid simultaneously for oil from a lease and the highest such price exceeds the higher of the aforementioned prices, then that price shall be the basis of royalty on all oil from said lease.

(3) *Royalty in kind.* Should Lessor, with approval of the Secretary, elect to take the royalty in kind, Lessee shall furnish free storage for royalty oil for a period not to exceed 60 days from date of production after notice of such election.

(b) *Royalty on gas*—(1) *Oil Lease.* All casinghead gas shall belong to the oil Lessee subject to any rights under existing gas leases. All casinghead gas removed from the lease from which it is produced shall be metered unless otherwise approved by the Superintendent and subject to a royalty of not less than 16⅔ percent of the market value of the gas and all products extracted therefrom, less a reasonable allowance for manufacture or processing. If oil Lessee supplies casinghead gas produced from one lease for operation and/or development of other leases, either his or others, a royalty of not less than 16⅔ percent shall be paid on the market value of all casinghead gas so used. All casinghead gas not utilized by the oil Lessee may, with the approval of the Superintendent, be utilized by the gas Lessee, subject to the prescribed royalty of not less than 16⅔ percent of the market value.

(2) *Gas lease.* Lessee shall pay a royalty of not less than 16⅔ percent of the market value value of all natural gas and products extracted therefrom produced and sold from his lease. Natural gas used in the reasonable and prudent operation and development of said lease shall be exempted from royalty payment.

(3) *Combination oil and gas lease.* Lessee shall pay royalty as provided in (1) and (2) above.

(c) *Minimum royalty.* In no event shall the royalty paid from producing leases during any year be less than an amount equal to the annual rental specified for the lease. Any underpayment of minimum royalty shall be due and payable within 45 days following the end of the lease year. After the primary term, Lessee shall submit with his payment evidence that the lease is producing in paying quantities. The Superintendent is authorized to determine whether the lease is actually producing in paying quantities or

[illegible] O [illegible]

has terminated for lack of such production. Payment for any underpayment not made within the time specified shall be subject to a late charge at the rate of not less than 1½ percent per month for each month or fraction thereof until paid.

[39 FR 22254, June 21, 1974, as amended at 43 FR 8136, Feb. 28, 1978; 43 FR 11815, Mar. 22, 1978]

§ 183.12 Government reserves right to purchase oil.

Any of the executive departments of the United States Government shall have the option to purchase all or any part of the oil produced from any lease at not less than the highest posted price as defined in § 183.11

§ 183.13 Time of royalty payments and reports.

(a) Royalty payments due may be paid by either purchaser or Lessee. Unless otherwise provided by the Osage Tribal Council and approved by the Superintendent, all payments shall be due by the 25th day of each month and shall cover the preceding month. Failure to make such payments shall subject Lessee or purchaser, whoever is responsible for royalty payment, to a late charge at the rate of not less than 1½ percent for each month or fraction thereof until paid.

(b) Lessee shall furnish certified monthly reports by the 25th of each following month covering all operations, whether there has been production or not, indicating therein the total amount of oil, natural gas, casinghead gas, and other products subject to royalty payment.

(c) Failure to remit payments or reports shall subject Lessee to further penalties as provided in §§ 183.42 and 183.43 and shall subject the division order to cancellation.

§ 183.14 Contracts and division orders.

(a) Lessee may enter into division orders or contracts with the purchasers of oil, gas, or derivatives therefrom which will provide for the purchaser to make payment of royalty in accordance with his lease: *Provided*, That such division orders or contracts shall not relieve Lessee from responsibility for the payment of the royalty should the purchaser fail to pay. No production shall be removed from the leased premises until a division order and/or contract and its terms are approved by the Superintendent: *Provided further*, That the Superintendent may grant temporary permission to run oil or gas from a lease pending the approval of a division order or contract. Lessee shall file a certified monthly report and pay royalty on the value of all oil and gas used off the premises for development and operating purposes. Lessee shall be responsible for the correct measurement and reporting of all oil and/or gas taken from the leased premises.

(b) Lessee shall require the purchaser of oil and/or gas from his lease or leases to furnish the Superintendent with a monthly statement of the gross barrels and/or gross Mcf sold not later than the 15th day of each month which shall cover the preceding month.

§ 183.15 Unit leases, assignments and related instruments.

(a) *Unitization of leases.* The Osage Tribal Council and Lessee or Lessees, may, with the approval of the Superintendent, unitize or merge, two or more oil or oil and gas leases into a unit or cooperative operating plan to promote the greatest ultimate recovery of oil and gas from a common source of supply or portion thereof embracing the lands covered by such lease or leases. The cooperative or unit agreement shall be subject to the regulations in this part and applicable laws governing the leasing of the Osage Mineral Estate. Any agreement between the parties in interest to terminate a unit or cooperative agreement as to all or any portion of the lands included shall be submitted to the Superintendent for his approval. Upon approval the leases included thereunder shall be restored to their original terms: *Provided*, That for the purpose of preventing waste and to promote the greatest ultimate recovery of oil and gas from a common source of supply or portion thereof, all oil leases, oil and gas leases, and gas leases issued heretofore and hereafter under the provisions of the regulations in this part shall be subject to any unit development plan affecting

the leased lands that may be required by the Superintendent with the consent of the Osage Tribal Council, and which plan shall adequately protect the rights of all parties in interest including the Osage Mineral Estate.

(b) *Assignments.* Approved leases or any interest therein may be assigned or transferred only with the approval of the Superintendent. The assignee must be qualified to hold such lease under existing rules and regulations and shall furnish a satisfactory bond conditioned for the faithful performance of the covenants and conditions thereof. Lessee must assign either his entire interest in a lease or legal subdivision thereof, or an undivided interest in the whole lease: *Provided,* That when an assignment covers only a portion of a lease or covers interests in separate horizons such assignment shall be subject to both the consent of the Osage Tribal Council and approval of the Superintendent. If a lease is divided by the assignment of an entire interest in any part, each part shall be considered a separate lease and the assignee shall be bound to comply with all the terms and conditions of the original lease. A fully executed copy of the assignment shall be filed with the Superintendent within 30 days after the date of execution by all parties. If requested within the 30-day period, the Superintendent may grant an extension of 15 days. A filing fee of $10 shall accompany each assignment.

(c) *Overriding royalty.* Agreements creating overriding royalties or payments out of production shall not be considered as an interest in a lease as such term is used in paragraph (b) of this section. Agreements creating overriding royalties or payments out of production are hereby authorized and the approval of the Department of the Interior or any agency thereof shall not be required with respect thereto, but such agreements shall be subject to the condition that nothing in any such agreement shall be construed as modifying any of the obligations of Lessee under his lease and the regulations in this part. All such obligations are to remain in full force and effect, the same as if free of any such royalties or payments. The existence of agreements creating overriding royalties or payments out of production, whether or not acutally paid, shall not be considered in justifying the shutdown or abandonment of any well. Agreements creating overriding royalties or payments out of production need not be filed with the Superintendent unless incorporated in assignments or instruments required to be filed pursuant to paragraph (b) of this section. An agreement creating overriding royalties or payment out of production shall be suspended when the working interest income per active producing well is equal to or less than the operational cost of the well, as determined by the Superintendent.

(d) *Drilling contracts.* The Superintendent is authorized to approve drilling contracts with a stipulation that such approval does not in any way bind the Department to approve subsequent assignments that may be provided for in said contracts. Approval merely authorizes entry on the lease for the purpose of development work.

Operations

§ 183.16 Commencement of operations.

(a) No operations shall be permitted upon any tract of land until a lease covering such tract shall have been approved by the Superintendent: *Provided,* That the Superintendent may grant authority to any party under such rules, consistent with the regulations in this part that he deems proper, to conduct geophysical and geological exploration work.

(b) Lessee shall submit applications on forms to be furnished by the Superintendent and secure his approval before:

(1) Well drilling, treating, or workover operations are started on the leased premises.

(2) Removing casing from any well.

(c) Lessee shall notify the Superintendent a reasonable time in advance of starting work, of intention to drill, redrill, deepen, plug, or abandon a well.

§ 183.17 How to acquire permission to begin operations on a restricted homestead allotment.

(a) Lessee may conduct operations within or upon a restricted homestead

selection only with the written consent of the Superintendent.

(b) If the allottee is unwilling to permit operations on his homestead, the Superintendent will cause an examination of the premises to be made with the allottee and lessee or his representative. Upon finding that the interests of the Osage Tribe require that the tract be developed, the Superintendent will endeavor to have the parties agree upon the terms under which operations on the homestead may be conducted.

(c) In the event the allottee and lessee cannot reach an agreement, the matter shall be presented by all parties before the Osage Tribal Council, and the Council shall make its recommendations. Such recommendations shall be considered as final and binding upon the allottee and lessee. A guardian may represent the allottee. Where no one is authorized or where no person is deemed by the Superintendent to be a proper party to speak for a person of unsound mind or feeble understanding, the Principal Chief of the Osage Tribe shall represent him.

(d) If the allottee or his representative does not appear before the Osage Tribal Council when notified by the Superintendent, or if the Council fails to act within 10 days after the matter is referred to it, the Superintendent may authorize lessee to proceed with operations in conformity with the provisions of his lease and the regulations in this part.

§ 183.18 Information to be given surface owners prior to commencement of drilling operations.

Except for the surveying and staking of a well, no operations of any kind shall commence until lessee or his authorized representative shall meet with the surface owner or his representative, if a resident of and present in Osage County, Oklahoma. At such meeting lessee or his authorized representative shall comply with the following requirements:

(a) Indicate the location of the well or wells to be drilled.

(b) Arrange for route of ingress and egress. Upon failure to agree on route ingress and egress, said route shall be set by the Superintendent.

(c) Impart to said surface owners the name and address of the party or representative upon whom the surface owner shall serve any claim for damages which he may sustain from mineral development or operations, and as to the procedure for settlement thereof as provided in § 183.21

(d) Where the drilling is to be on restricted land, lessee or his authorized representative in the manner provided above shall meet with the Superintendent.

(e) Where the surface owner or his representative is not a resident of or is not physically present in Osage County, then the Superintendent shall be so advised whereupon the Superintendent may authorize Lessee to proceed with operations.

[39 FR 22254, June 21, 1974, as amended at 41 FR 50648, Nov. 17, 1976; 43 FR 8136, Feb. 28, 1978]

§ 183.19 Use of surface of land.

(a) Lessee or his authorized representative shall have the right to use so much of the surface of the land within the Osage Mineral Estate as may be reasonable for operations and marketing. This includes but is not limited to the right to lay and maintain pipelines, electric lines, pull rods, other appliances necessary for operations and marketing, and the right-of-way for ingress and egress to any point of operations. If Lessee and surface owner are unable to agree as to the routing of pipelines, electric lines, etc., said route shall be set by the Superintendent. The right to use water for lease operations is set out in § 183.24. Lessee shall conduct his operations in a workmanlike manner, commit no waste and allow none to be committed upon the land, nor permit any nuisance to be maintained on the premises under his control.

(b) Before commencing a drilling operation, Lessee shall pay or tender to the surface owner commencement money in the amount of $25 per seismic shot hole and commencement money in the amount of $300 for each well, after which Lessee shall be entitled to immediate possession of the drilling site. Commencement money will not be required for the drilling of a well which was drilled under the

original lease contract. A drilling site shall be held to the minimum area essential for operations and shall not exceed one and one-half acres in area unless authorized by the Superintendent. Commencement money shall be a credit toward the settlement of the total damages. Acceptance of commencement money by the surface owner does not in any way affect his right to compensation for damages as described in § 183.20, occasioned by the drilling and completion of the well for which it was paid. Since actual damage to the surface from operations cannot necessarily be ascertained prior to the completion of a well as a serviceable well or dry hole, a damage settlement covering the drilling operation need not be made until after completion of drilling operations.

(c) Where the surface is restricted land, commencement money shall be paid to the Superintendent for the landowner. All other surface owners shall be paid or tendered such commencement money direct. Where such surface owners are not residents of Osage County nor have a representative located therein, such payment shall be made or tendered to the last known address of the surface owner at least 5 days before commencing drilling operation on any well: *Provided*, That should lessee be unable to reach the owner of the surface of the land for the purpose of tendering the commencement money or if the owner of the surface of the land shall refuse to accept the same, lessee shall deposit such amount with the Superintendent by check payable to the Bureau of Indian Affairs. The superintendent shall thereupon advise the owner of the surface of the land by mail at his last known address that the commencement money is being held for payment to him upon his written request.

(d) Lessee shall also pay fees for tank sites not exceeding 50 feet square at the rate of $40 per tank or other vessel: *Provided*, That no payment shall be due for a tank temporarily set on a well location site for drilling, completing, or testing. The sum to be paid for a tank occupying more than 50 feet square shall be agreed upon between the surface owner and lessee or, on failure to agree, the same shall be fixed by arbitration as provided by § 183.21.

[39 FR 22254, June 22, 1974, as amended at 43 FR 8136, Feb. 28, 1978; 43 FR 11815, Mar. 22, 1978]

§ 183.20 Settlement of damages claimed.

(a) Lessee or his authorized representative or geophysical permittee shall pay for all damages to growing crops, any improvements on the lands, and all other surface damages as may be occasioned by operations. Commencement money shall be a credit toward the settlement of the total damages occasioned by the drilling and completion of the well for which it was paid. Such damages shall be paid to the owner of the surface and by him apportioned among the parties interested in the surface, whether as owner, surface lessee, or otherwise, as the parties may mutually agree or as their interests may appear. If lessee or his authorized representative and surface owner are unable to agree concerning damages, the same shall be determined by arbitration. Nothing herein contained shall be construed to deny any party the right to file an action in a court of competent jurisdiction if he is dissatisfied with the amount of the award.

(b) Surface owners shall notify their lessees or tenants of the regulations in this part and of the necessary procedure to follow in all cases of alleged damages. If so authorized in writing, surface lessees or tenants may represent the surface owners.

(c) In settlement of damages on restricted land all sums due and payable shall be paid to the Superintendent for credit to the account of the Indian entitled thereto. The Superintendent will make the apportionment between the Indian landowner or owners and surface Lessee of record.

(d) Any person claiming an interest in any leased tract or in damages thereto, must furnish to the Superintendent a statement in writing showing said claimed interest. Failure to furnish such statement shall constitute a waiver of notice and estop said person from claiming any part of such damages after the same shall have been disbursed.

[39 FR 22254, June 21, 1974, as amended at 41 FR 50649, Nov. 17, 1976; 43 FR 8137, Feb. 28, 1978]

§ 183.21 Procedure for settlement of damages claimed.

Where the surface owner or his lessee suffers damage due to the oil and gas operations and/or marketing of oil or gas by lessee or his authorized representative, the procedure for recovery shall be as follows:

(a) The party or parties aggrieved shall, as soon as possible after the discovery of any damages, serve written notice to Lessee or his authorized representative as provided by § 183.18. Written notice shall contain the nature and location of the alleged damages, the date of occurrence, the names of the party or parties causing said damages, and the amount of damages. It is not intended by this requirement to limit the time within which action may be brought in the courts to less than the 90-day period allowed by section 2 of the Act of March 2, 1929 (45 Stat. 1478, 1479).

(b) If the alleged damages are not adjusted at the time of such notice, Lessee or his authorized representative shall try to adjust the claim with the party or parties aggrieved within 20 days from receipt of the notice. If the claimant is the owner of restricted property and a settlement results, a copy of the settlement agreement shall be filed with the Superintendent. If the settlement agreement is approved by the Superintendent, payment shall be made to the Superintendent for the benefit of said claimant.

(c) If the parties fail to adjust the claim within the 20 days specified, then within 10 days thereafter each of the interested parties shall appoint an arbitrator who immediately upon their appointment shall agree upon a third arbitrator. If the two arbitrators shall fail to agree upon a third arbitrator within 10 days, they shall immediately notify the parties in interest. If said parties cannot agree upon a third arbitrator within 5 days after receipt of such notice, the Superintendent shall appoint the third arbitrator.

(d) As soon as the third arbitrator is appointed, the arbitrators shall meet; hear the evidence and arguments of the parties; and examine the lands, crops, improvements, or other property alleged to have been injured. Within 10 days they shall render their decision as to the amount of the damage due. The arbitrators shall be disinterested persons. The fees and expenses of the third arbitrator shall be borne equally by the claimant and Lessee or his authorized representative. Each Lessee or his authorized representative and claimant shall pay the fee and expenses for the arbitrator appointed by him.

(e) When an act of an oil or gas lessee or his authorized representative results in injury to both the surface owner and his lessee, the parties aggrieved shall join in the appointment of an arbitrator. Where the injury complained of is chargeable to one or more oil or gas Lessee, or his authorized representative, such lessee or said representative shall join in the appointment of an arbitrator.

(f) Any two of the arbitrators may make a decision as to the amount of damage due. The decision shall be in writing and forthwith shall be served upon the parties in interest. Each party shall have 90 days from the date the decision is served in which to file an action in a court of competent jurisdiction. If no such action is filed within said time and the award is against Lessee or his authorized representative, he shall pay the same together with interest at the rate of 6 percent per annum from date of award, within 10 days after the expiration of said period for filing an action. If he fails to do so, in the discretion of the Superintendent the Lessee or his authorized representative shall be subject to a penalty of $10 per day for each day thereafter that he remains in default.

(g) Lessee or his authorized representative shall file with the Superintendent a report on each settlement agreement, setting out the nature and location of the damage, date, and amount of the settlement, and any other pertinent information.

[39 FR 22254, June 21, 1974, as amended at 41 FR 50649, Nov. 17, 1976]

§ 183.22 Prohibition of pollution.

(a) All operators, contractors, drillers, service companies, pipe pulling and salvaging contractors, or other persons, shall at all times conduct their operations and drill, equip, operate, produce, plug and abandon all wells drilled for oil or gas, service wells or exploratory wells (including seismic, core and stratigraphic holes) in a manner that will prevent pollution and the migration of oil, gas, salt water or other substance from one stratum into another, including any fresh water bearing formation.

(b) Pits for drilling mud or deleterious substance used in the drilling, completion, recompletion, or workover of any well shall be constructed and maintained so as to prevent pollution of surface and subsurface fresh water. These pits shall be enclosed with a fence of at least four strands of barbed wire, or an approved substitute, stretched taut to adequately braced corner posts, unless the surface owner, user, or the Superintendent gives consent to the contrary. As soon as possible after completion of operations, pits shall be emptied and leveled unless otherwise requested by surface owner or user.

(c) Drilling pits shall be adequate to contain mud and other material extracted from wells and shall have adequate storage to maintain a supply of mud for use in emergencies.

(d) No earthen pit, except those used in the drilling, completion, recompletion or workover of a well, shall be constructed, enlarged, reconstructed or used without approval of the Superintendent. Unlined earthen pits shall not be used for the continued storage of salt water or other deleterious substances.

(e) B.S., salt water and other deleterious substances shall be contained in proper receptacles and not permitted to escape. Where existing lease facilities are inadequate for proper disposal of such substances, Lessee shall notify the Superintendent, who shall give instructions as to their disposal.

§ 183.23 Easements for wells off leased premises.

The Superintendent, with the consent of the Osage Tribal Council, may grant easements for wells off the leased premises to be used for waste or salt water disposal, water injection, water supply, or other necessary services. Rental payable to the Osage Tribe for such easements shall be an amount agreed to by Grantee and the Osage Tribal Council subject to the approval of the Superintendent. Grantee shall be responsible for all damages resulting from the use of such wells and settlement therefor shall be made as provided in § 183.21.

§ 183.24 Lessee's use of water.

Lessee or his contractor may, with the approval of the Superintendent, use water from streams and natural water courses to the extent that same does not diminish the supply below the requirements of the surface owner from whose land the water is taken. Similarly, Lessee or his contractor may use water from reservoirs formed by the impoundment of water from such streams and natural water courses, provided such use does not exceed the quantity to which they originally would have been entitled had the reservoirs not been constructed. Lessee or his contractor may install necessary lines and other equipment within the Osage Mineral Estate to obtain such water. Any damage resulting from such installation shall be settled as provided in § 183.21.

§ 183.25 Gas well drilled by oil lessees and vice versa.

When an oil lessee in drilling a well encounters a formation or zone having indications of possible gas production, or the gas lessee in drilling a well encounters a formation or zone having indication of possible oil production, he shall immediately notify the other lessee and the Superintendent. Lessee drilling the well shall obtain all information which a prudent operator would normally obtain to evaluate the productive capability of such formation or zone.

(a) *Gas well to be turned over to gas lessee.* If the oil lessee drills a gas well, he shall, without removing from the well any of the casing or other equipment, immediately shut the well in and notify the gas lessee and the Superintendent. If the gas lessee does

not, within 15 days after receiving notice and cost of drilling, elect to take over such well and reimburse the oil lessee the cost of drilling the same, including all damages paid and the cost in-place of casing, tubing, and other equipment, the oil lessee shall immediately confine the gas to the original stratum. The disposition of such well and the production therefrom shall then be subject to the approval of the Superintendent.

(b) *Oil well to be turned over to oil lessee.* If the gas lessee drills an oil well, he shall immediately, without removing from the well any of the casing or other equipment, notify the oil lessee and the Superintendent. If the oil lessee does not, within 15 days after receipt of notice and cost of drilling, elect to take over the well, he shall immediately notify the gas lessee, and the disposition of such well and the production therefrom shall be subject to the approval of the Superintendent. Should the oil lessee elect to take over the well, he shall pay the gas lessee the cost of drilling the same, including all damages paid and cost in-place of casing and other equipment.

(c) *Lands not leased.* If the gas lessee shall drill an oil well upon lands not leased for oil purposes or the oil lessee shall drill a gas well on lands not leased for gas purposes, the Superintendent may, until such time as said lands are leased, permit the lessee who drilled the well to operate and market the production therefrom. Where said lands are leased, the lessee who drilled and completed the well shall be reimbursed by the oil or gas lessee, as the case may be, the cost of drilling said well, including all damages paid and the cost in-place of casing and other equipment. If the lessee does not elect to take over said well as provided above, the disposition of such well and the production therefrom shall then be subject to the approval of the Superintendent.

§ 183.26 Determining cost of well.

The term "cost of drilling" as applied where one lessee takes over a well drilled by another, shall include all reasonable, usual, necessary, and proper expenditures. A list of expenses mentioned in this section shall be presented to proposed purchasing lessee within 10 days after the completion of the well. In the event of a disagreement between the parties as to the charges assessed against the well that is to be taken over, such charges shall be determined by the Superintendent.

§ 183.27 Gas for operating purposes and tribal use.

(a) *Gas to be furnished oil lessee.* Lessee of a producing gas lease shall furnish the oil lessee sufficient gas for operating purposes at a rate to be agreed upon, or on failure to agree the rate shall be determined by the Superintendent: *Provided,* That the oil lessee shall at his own expense and risk, furnish and install the necessary connections to the gas lessee's well or pipeline. All such connections shall be reported in writing to the Superintendent.

(b) *Use of gas by Osage Tribe.* (1) Gas from any well or wells shall be furnished any Tribal-owned building or enterprise at a rate not to exceed the price less royalty being received or offered by a gas purchaser: *Provided,* That such requirement shall be subject to the determination by the Superintendent that gas in sufficient quantities is available above that needed for lease operation and that no waste would result. In the absence of a gas purchaser the rate to be paid by the Osage Tribe shall be determined by the Superintendent based on prices being paid by purchasers in the Osage Mineral Estate. The Osage Tribe is to furnish all necessary material and labor for such connection with Lessee's gas system. The use of such gas shall be at the risk of the Osage Tribe at all times.

(2) Any member of the Osage Tribe residing in Osage County and outside a corporate city is entitled to the use at his own expense of not to exceed 400,000 cubic feet of gas per calendar year for his principal residence at a rate not to exceed the amount paid by a gas purchaser plus 10 percent: *Provided,* That such requirement shall be subject to the determination by the Superintendent that gas in sufficient quantities is available above that needed for lease operation and that no waste would result. In the absence of a

gas purchaser the amount to be paid by the Tribal member shall be determined by the Superintendent. Gas to Tribal members is not royalty free. The Tribal member is to furnish all necessary material and labor for such connection to Lessee's gas system, and shall maintain his own lines. The use of such gas shall be at the risk of the Tribal member at all times.

(3) Gas furnished by Lessee under paragraphs (b) (1) and (2) of this section may be terminated only with the approval of the Superintendent. Written application for termination must be made to the Superintendent showing justification.

CESSATION OF OPERATIONS

§ 183.28 Shutdown, abandonment, and plugging of wells.

No productive well shall be abandoned until its lack for further profitable production of oil and/or gas has been demonstrated to the satisfaction of the Superintendent. Lessee shall not shut down, abandon, or otherwise discontinue the operation or use of any well without the written approval of the Superintendent. All applications for such approval shall be submitted to the Superintendent on forms furnished by him.

(a) Application for authority to shut down or discontinue use or operation of a well shall set forth justification therefor and probable duration the means by which the well bore is to be protected, and the contemplated eventual disposition of the well. The method of conditioning such well shall be subject to the approval of the Superintendent.

(b) Prior to permanent abandonment of any well, the oil lessee or the gas lessee, as the case may be, shall offer the well to the other for his recompletion or use under such terms as may be mutually agreed upon but not in conflict with the regulations. Failure of the Lessee receiving the offer to reply within 10 days after receipt thereof shall be deemed as rejection of the offer. If, after indicating acceptance, the two parties cannot agree on the terms of the offer within 30 days, the disposition of such well shall be determined by the Superintendent.

§ 183.29 Disposition of casings and other improvements.

(a) Upon termination of lease. Permanent improvements, unless otherwise provided by written agreement with the surface owner and filed with the Superintendent, shall remain a part of said land and become the property of the surface owner upon termination of the lease, other than by cancellation, excepting personal property which may include tools, tanks, pipelines, pumping and drilling equipment, derricks, engines, machinery, and the casings of all wells: *Provided*, That when any lease terminates all such personal property shall be removed within 90 days or such reasonable extension of time as may be granted by the Superintendent. Otherwise, the ownership of all casings shall revert to Lessor and all other personal property and permanent improvements to the surface owner. Nothing herein shall be construed to relieve Lessee of responsibility for removing any such personal property or permanent improvements from the premises if so required by the Superintendent and restoring the premises as near as practicable to its original state.

(b) Upon cancellation of lease. When there has been a cancellation for cause, Lessor shall be entitled and authorized to take immediate possession of the lease premises and all permanent improvements and all other equipment necessary for the operation of the lease.

(c) Wells to be abandoned shall be promptly plugged as prescribed by the Superintendent. Applications to plug shall include a statement affirming compliance with § 183.28(b) above and shall set forth reasons for plugging, a detailed statement of the proposed work including kind, location, and length of plugs (by depth), plans for mudding and cementing, testing, parting and removing casing, and any other pertinent information: *Provided*, That the Superintendent may give oral permission and instructions pending receipt of a written application to plug a newly drilled hole. Lessee shall remit a fee of $15 with each written application for authority to plug a well. This fee will be refunded if permission is not granted.

(d) Lessee shall plug and fill all dry or abandoned wells in a manner to confine the fluid in each formation bearing fresh water, oil, gas, salt water, and other minerals, and to protect it against invasion of fluids from other sources. Mud-laden fluid, cement, and other plugs shall be used to fill the hole from bottom to top: *Provided*, That if a satisfactory agreement is reached between Lessee and the surface owner, subject to the approval of the Superintendent, Lessee may condition the well for use as a fresh water well and shall so indicate on the plugging record. The manner in which plugging material shall be introduced and the type of material so used shall be subject to the approval of the Superintendent. Within 10 days after plugging, Lessee shall file with the Superintendent a complete report of the plugging of each well. When any well is plugged and abandoned, Lessee shall, within 90 days, clean up the premises around such well to the satisfaction of the Superintendent.

Requirements of Lessees

§ 183.30 Lessees subject to Superintendent's orders; books and records open to inspection.

Lessee shall comply with all orders or instructions issued by the Superintendent. The Superintendent or his representative may enter upon the leased premises for the purpose of inspection. Lessee shall keep a full and correct account of all operations, receipts, and disbursements and make reports thereof, as required. Lessee's books and records shall be available to the Superintendent for inspection.

§ 183.31 Lessee's process agents.

(a) Before actual drilling or development operations are commenced on leased lands, Lessee or Assignee, if not a resident of the State of Oklahoma, shall appoint a local or resident representative within the State of Oklahoma on whom the Superintendent may serve notice or otherwise communicate in securing compliance with the regulations in this part, and shall notify the Superintendent of the name and post office address of the representative appointed.

(b) Where several parties own a lease jointly, one representative or agent shall be designated whose duties shall be to act for all parties concerned. Designation of such representative should be made by the party in charge of operations.

(c) In the event of the incapacity or absence from the State of Oklahoma of such designated local or resident representative, Lessee shall appoint a substitute to serve in his stead. In the absence of such representative or appointed substitute, any employee of Lessee upon the leased premises or person in charge of drilling or related operations thereon shall be considered the representative of Lessee for the purpose of service of orders or notices as herein provided.

§ 183.32 Well records and reports.

(a) Lessee shall keep accurate and complete records of the drilling, redrilling, deepening, repairing, treating, plugging, or abandonment of all wells. These records shall show all the formations penetrated, the content and character of oil, gas, or water in each formation, and the kind, weight, size, landed depth and cement record of casing used in drilling each well; the record of drill-stem and other bottom hole pressure or fluid sample surveys, temperature surveys, directional surveys, and the like; the materials and procedure used in the treating or plugging of wells or in preparing them for temporary abandonment; and any other information obtained in the course of well operation.

(b) Lessee shall take such samples and make such tests and surveys as may be required by the Superintendent to determine conditions in the well or producing reservoir and to obtain information concerning formations drilled, and shall furnish reports thereof as required by the Superintendent.

(c) Within 10 days after completion of operations on any well, Lessee shall transmit to the Superintendent the applicable information on forms furnished by the Superintendent; a copy of electrical, mechanical or radioactive log, or other types of survey of the well bore; and core analysis obtained from the well. Lessee shall also submit

other reports and records of operations as may be required and in the manner and form prescribed by the Superintendent.

(d) Lessee shall measure production of oil, gas, and water from individual wells at reasonably frequent intervals to the satisfaction of the Superintendent.

(e) Upon request and in the manner and form prescribed by the Superintendent, Lessee shall furnish a plat showing the location, designation, and status of all wells on the leased lands, together with such other pertinent information as the Superintendent may require.

§ 183.33 Line drilling.

Lessee shall not drill within 300 feet of boundary line of leased lands, nor locate any well or tank within 200 feet of any public highway, any established watering place, or any building used as a dwelling, granary, or barn, except with the written permission of the Superintendent.

§ 183.34 Wells and tank batteries to be marked.

Lessee shall clearly and permanently mark all wells and tank batteries in a conspicuous place with number, legal description and operator, as applicable, and shall take all necessary precautions to preserve these markings.

§ 183.35 Formations to be protected.

Lessee shall, to the satisfaction of the Superintendent, take all proper precautions and measures to prevent damage or pollution of oil, gas, fresh water, or other mineral bearing formations.

§ 183.36 Control devices.

In drilling operations in "wildcat" territory, or in fields where high pressures, lost circulation, or other conditions which could result in blowouts are believed to exist, Lessee shall have on such leased premises an approved gate valve or other controlling device installed and in proper working condition for use until the well is completed.

§ 183.37 Waste of oil and gas.

Lessee shall conduct all operations in a manner that will prevent waste of oil and gas and shall not wastefully utilize oil or gas. The Superintendent shall have the authority to impose such requirements as he deems necessary to prevent waste of oil and gas and to promote the greatest ultimate recovery of oil and gas. Waste as applied herein includes, but is not limited to, the inefficient excessive or improper use or dissipation of reservoir energy which would reasonably reduce or diminish the quantity of oil or gas that might ultimately be produced, or the unnecessary or excessive surface loss or destruction, without beneficial use, of oil and/or gas.

§ 183.38 Measuring and storing oil.

All production run from the lease shall be measured according to methods and devices approved by the Superintendent. Facilities suitable for containing and measuring accurately all crude oil produced from the wells shall be provided by Lessee and shall be located on the leasehold unless otherwise approved by the Superintendent. Lessee shall furnish to the Superintendent a copy of 100-percent capacity tank table for each tank. Meters and installations for measuring oil must be approved, and tests of their accuracy shall be made when directed by the Superintendent.

§ 183.39 Measurement of gas.

All gas, required to be measured, shall be measured by meter (preferably of the orifice meter type) unless otherwise agreed to by the Superintendent. All gas meters must be approved by the Superintendent and installed at the expense of Lessee or purchaser at such places as may be agreed to by the Superintendent. For computing the volume of all gas produced, sold or subject to royalty, the standard of pressure shall be 14.65 pounds to the square inch, and the standard of temperature shall be 60 degrees F. All measurements of gas shall be adjusted by computation to these standards, regardless of the pressure and temperature at which the gas was acutally measured, unless

otherwise authorized in writing by the Superintendent.

§ 183.40 Use of gas for lifting oil.

Lessee shall not use natural gas from a distinct or separate stratum for the purpose of flowing or lifting the oil, except where said Lessee has an approved right to both the oil and the gas, and then only with the approval of the Superintendent of such use and of the manner of its use.

§ 183.41 Accidents to be reported.

Lessee shall make a complete report to the Superintendent of all accidents, fires, or acts of theft and vandalism occurring on the leased premises.

Penalties

§ 183.42 Penalty for violation of lease terms.

Violation of any of the terms or conditions of any lease or of the regulations in this part shall subject the lease to cancellation by the Superintendent, or Lessee to a fine of not more than $500 per day for each day of such violation or noncompliance with the orders of the Superintendent, or to both such fine and cancellation: *Provided*, That prior to the determination that a fine or cancellation of a lease will be imposed as provided for in this section, Lessee shall receive a 30-day notice with respect to the terms of the lease or of the regulations violated and, if he so requests, may receive a hearing before the Superintendent. Payment of penalties not received within 10 days after notice of final decision is given shall be subject to late charges at the rate of not less than 1½ percent per month for each month or fraction thereof until paid.

§ 183.43 Penalties for violation of certain operating regulations.

In lieu of the penalties provided under § 183.42, penalties may be imposed by the Superintendent for violation of certain sections of the regulations of this part as follows:

(a) For failure to obtain permission to start operations required by § 183.16(b), $10 per day until permission is obtained.

(b) For failure to file records required by § 183.32, $10 per day until compliance is met.

(c) For failure to mark wells and tank batteries as required by § 183.34, $50 for each well and tank battery.

(d) For failure to construct and maintain pits as required by § 183.22, $10 for each day after operations are commenced on any well until compliance is met.

(e) For failure to comply with § 183.36 regarding valve or other approved controlling device, $100.

(f) For failure to notify Superintendent before drilling, redrilling, deepening, plugging, or abandoning any well, as required by §§ 183.16(c) and 183.25, $200.

(g) For failure to properly care for and dispose of B.S. and salt water as provided in § 183.22, $100 per day and in the event of failure to comply within 5 days after notification by the Superintendent, $500 per day until compliance is met.

(h) For failure to file plugging reports as required by § 183.29 and for failure to file reports as required by § 183.13, $10 per day for each violation until compliance is met.

(i) For failure to perform or start an operation within 5 days after ordered by the Superintendent in writing under authority provided in this part, if said operation is thereafter performed by or through the Superintendent, the actual cost of performance thereof, plus 25 percent.

Appeals and Notices

§ 183.44 Hearings and appeals.

Any person, firm, or corporation aggrieved by any decision or order issued by or under the authority of the Superintendent, pursuant to the regulations in this part, may file with the Superintendent within 30 days an application for modification or revocation of such decision or order. The Superintendent shall give notice of the time and place and conduct a hearing upon the application within 10 days after its receipt by him. If the applicant is not satisfied with the decision of the Superintendent, an appeal may be taken as provided in 25 CFR Part 2.

[43 FR 8137, Feb. 28, 1978]

§ 183.45 Notices.

Whenever notice is provided for in the regulations in this part, the Superintendent may in his discretion increase the time allowed.

PART 184—LEASING OF CERTAIN LANDS IN WIND RIVER INDIAN RESERVATION, WYOMING, FOR OIL AND GAS MINING

Sec.

184.1 Definitions.

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184.3 Leases to citizens of the United States except Government employees.
184.4 Sale of oil and gas leases.
184.5 Terms of leases, procedure for renewal and execution.
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184.25 Inspection of premises, books and accounts.
184.26 Assignments and overriding royalties.
184.27 Stipulations.
184.28 Cancellations.
184.29 Fees.
184.30 Forms.

Authority: Sec. 1, 39 Stat. 519, unless otherwise noted.

Source: 22 FR 10622, Dec. 24, 1957, unless otherwise noted.

§ 184.1 Definitions.

(a) The term "superintendent" in this part refers to the superintendent or other officers of the Bureau of Indian Affairs or of the Government who may have jurisdiction over the Shoshone or Wind River Reservation.

(b) The term "supervisor" in this part refers to a representative of the Secretary of the Interior, under direction of the Director of the United States Geological Survey, authorized and empowered to supervise and direct operations under oil and gas mining leases, to furnish scientific and technical information and advice, to ascertain and record the amount and value of production, and to determine and record rentals and royalties due and paid.

Cross Reference: For rules and regulations of the Geological Survey, see 30 CFR Chapter II.

How To Acquire Leases

§ 184.2 Applications for leases.

Applications for leases should be made to the superintendent.

§ 184.3 Leases to citizens of the United States except Government employees.

Leases will be made only to persons who are citizens of the United States or have declared their intention to become so, or corporations which are organized under the laws of the United States or one of the States or Territories: *Provided*, That no lease, assignment thereof, or interest therein will be approved to any employee or employees of the United States Government, whether connected with the Bureau or otherwise, and no employee of the Interior Department shall be permitted to acquire any interest in such leases by ownership of stock in corporations having leases or in any other manner.

(R.S. 2078; 25 U.S.C. 68)

§ 184.4 Sale of oil and gas leases.

(a) At such times and in such manner as he may deem appropriate, after being authorized by the Joint Business Council of the Shoshone and Arapahoe Tribes or its authorized representative, the superintendent shall

publish notices at least thirty days prior to the sale, unless a shorter period is authorized by the Secretary of the Interior or his authorized representative, that oil and gas leases on specific tracts, each of which shall be in a reasonably compact body, will be offered to the highest responsible bidder for a bonus consideration, in addition to stipulated rentals and royalties. Each bid must be accompanied by a cashier's check, certified check, or postal money order, payable to the payee designated in the invitation to bid, in an amount not less than 25 percent of the bonus bid. Within 30 days after notification of being the successful bidder, said bidder must remit the balance of the bonus, the first year's rental, and his share of the advertising costs, and shall file with the superintendent the lease in completed form. The superintendent may for good and sufficient reasons, extend the time for completion and submission of the lease form, but no extension shall be granted for remitting the balance of monies due. If the successful bidder fails to pay the full consideration within said period, or fails to file the completed lease within said period or extension thereof, or if the lease is disapproved through no fault of the lessor or the Department of the Interior, 25 percent of the bonus bid will be forfeited for the use and benefit of the Shoshone and Arapahoe Tribes.

(b) All notices or advertisements of sales of oil and gas leases shall reserve to the Secretary of the Interior the right to reject all bids when in his judgment the interests of the Indians will be best served by so doing, and that if no satisfactory bid is received, or if the accepted bidder fails to complete the lease, or if the Secretary of the Interior shall determine that it is unwise in the interests of the Indians to accept the highest bid, the Secretary may readvertise such lease for sale, or if deemed advisable, with the consent of the tribal council or other governing tribal authorities, a lease may be made by private negotiations. The successful bidder or bidders will be required to pay his or their share of the advertising costs. Amounts received from unsuccessful bidders will be returned; but when no bid is accepted on a tract, the costs of advertising will be assessed against the applicant who requested that said tract be advertised.

[22 FR 10622, Dec. 24, 1957, as amended at 25 FR 7185, July 29, 1960]

§ 184.5 Terms of leases, procedure for renewal and execution.

(a) Leases shall be for a period of twenty years with the preferential right in the lessee to renew the same for successive periods of ten years each upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior or his authorized representative, unless otherwise provided by law at the expiration of any such period. Applications for renewal of leases shall be filed with the superintendent within ninety days prior to the date of expiration of the lease. One copy of the application for renewal shall be filed by the applicant with the Joint Business Council of the Shoshone and Arapahoe Tribes and no lease shall be renewed unless the Joint Business Council or its authorized representative is afforded an opportunity to present the Council's views to the Secretary of the Interior or his authorized representative.

(b) The Secretary of the Interior or his authorized representative may execute oil and gas leases with the consent of the Joint Business Council or its authorized representative, and may execute renewals of leases after consultation with the Joint Business Council or its authorized representative.

[25 FR 7185, July 29, 1960]

§ 184.6 Corporations and corporate information.

(a) If the applicant for a lease is a corporation, it shall file evidence of authority of its officers to execute papers; and with its first application it shall also file a certified copy of its articles of incorporation, and, if foreign to the state in which the lands are located, evidence showing compliance with the corporation laws thereof. Statements of changes in officers and stockholders shall be furnished by a corporation lessee to the superintend-

ent January 1 of each year, and at such other times as may be requested.

(b) Whenever deemed advisable in any case the superintendent may require a corporation applicant or lessee to file:

(1) List of officers, principal stockholders, and directors, with post-office addresses and number of shares held by each.

(2) A sworn statement of the proper officer showing:

(i) The total number of shares of the capital stock actually issued and the amount of cash paid into the treasury on each share sold; or, if paid in property, the kind, quantity, and value of same paid per share.

(ii) Of the stock sold, how much remains unpaid and subject to assessment.

(iii) The amount of cash the company has in its treasury and elsewhere.

(iv) The property, exclusive of cash owned by the company and its value.

(v) The total indebtedness of the company and the nature of its obligations.

(vi) Whether the applicant or any person controlling, controlled by or under common control with the applicant has filed any registration statement, application for registration, prospectus or offering sheet with the Securities and Exchange Commission pursuant to the Securities Act of 1933 or the Securities Exchange Act of 1934 or said Commission's rules and regulations under said acts; if so, under what provision of said acts or rules and regulations; and what disposition of any such statement, application, prospectus or offering sheet has been made.

(c) Affidavits of individual stockholders, setting forth in what corporations, or with what persons, firms, or associations such individual stockholders are interested in mining leases on restricted lands within the state, and whether they hold such interest for themselves or in trust.

CROSS REFERENCE: For rules and regulations of the Securities and Exchange Commission, See 17 CFR Chapter II.

§ 184.7 Additional information from applicant.

The superintendent may, either before or after approval of a lease, call for any additional information desired to carry out the regulations in this part. If a lessee shall fail to furnish the papers necessary to put his lease and bond in proper form for consideration, the superintendent shall forward such lease for disapproval.

§ 184.8 Bonds.

The provisions of § 171.6 of this chapter, or as hereafter amended, are applicable to leases under this part.

§ 184.9 Acreage limitation; leases on noncontiguous tracts.

No person, firm, or corporation will be allowed to lease for oil and gas more than 10,240 acres in the aggregate. The land contained in the lease shall be described by legal subdivisions, and leases may be executed to cover only adjoining or contiguous subdivisions. In case a lessee is a successful bidder for two or more tracts of land which are not contiguous, separate leases shall be executed.

§ 184.10 Minerals other than oil and gas.

Unreserved, unwithdrawn, and unallotted lands which have not been leased for oil and gas under the act of August 21, 1916 (39 Stat. 519) and which are not chiefly valuable therefor, are subject to mineral application or mineral entry, for minerals other than oil and gas, under the supervision of the Bureau of Land Management.

§ 184.11 Bureau of Land Management to be furnished copy of lease.

The Bureau of Land Management shall be furnished with a copy of each lease signed by the Secretary of the Interior.

§ 184.12 Mineral reserves in nonmineral entries.

Where lands have been leased under authority of said act of August 21, 1916 (39 Stat. 519), and nonmineral entry is subsequently lawfully made for such lands with a view to obtaining a restricted patent therefor, all such subsequently allowed nonmineral entries shall be with the mineral reservation prescribed by the act of July 17, 1914 (38 Stat. 509).

§ 184.13 Vested rights to be respected.

All drilling and other oil and natural gas developments and mining operations, work, and improvements, and all other acts and things necessary to be done, in connection with the exploration for mining and production of oil and natural gas from the leased premises, under the terms and conditions of a lease shall be performed with due regard to the rights, statutory and otherwise, of others, if any, who may have or who may acquire a lawful claim or estate to the leased premises, separate and distinct from the oil and gas or other mineral therein contained. See act of July 17, 1914 (38 Stat. 509).

§ 184.14 Government reserves right to purchase oil and gas.

In time of war or other public emergency any of the executive departments of the United States Government shall have the option to purchase at the posted market price on the date of sale all or any part of the minerals produced under any lease.

Rents and Royalties

§ 184.15 Manner of payment.

All payments due the lessor shall be made to the superintendent for the benefit of the Shoshone Indian Tribe, in accordance with the act of August 21, 1916 (39 Stat. 519), and no credit will be given any lessee for payments made otherwise. Payments of rentals and royalties except the first year's rental, which shall be paid to the superintendent as prescribed in § 184.4 shall be transmitted to the superintendent through the supervisor. All such payments shall be accompanied by a statement, in triplicate, by the lessee, showing the specific items of royalty or rental that the remittance is intended to cover, and payment of royalties on production shall be made not later than the last day of the calendar month following the production for which such payment is to be made.

§ 184.16 Crediting advance annual payments.

In the event of discovery of minerals in paying quantities all advance rents and advance royalties shall be allowed as credit on stipulated royalties as they accrue for the year for which such advance payments have been made. No refund of any such advance payment made under any lease will be allowed in the event the royalty on production for the year is not sufficient to equal such advance payment; nor will any part of the moneys so paid be refunded to the lessee because of any subsequent surrender or cancellation of the lease.

§ 184.17 Rates of rents and royalties.

(a) The lessee shall pay, beginning with the date of execution of leases by the Secretary of the Interior, a rental of $1.25 per acre per annum in advance during the continuance thereof, together with a royalty of 12½ percent of the value or amount of all oil, gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and saved from the land leased, save and except oil and/or gas used by the lessee for development and operation purposes on the lease, which oil or gas shall be royalty free. A higher rate of royalty may be fixed by the Secretary of the Interior or his authorized representative, prior to the advertisement of land for oil and gas leases. During the period of supervision, "value" for the purposes of the lease may, in the discretion of the Secretary of the Interior, be calculated on the basis of the highest price paid or offered (whether calculated on the basis of short or actual volume) at the time of production for the major portion of the oil of the same gravity, and gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and sold from the field where the leased lands are situated, and the actual volume of the marketable product less the content of foreign substances as determined by the supervisor. The actual amount realized by the lessee from the sale of said products may, in the discretion of the Secretary of the Interior, be deemed mere evidence of or conclusive evidence of such value. When paid in value, such royalties shall be due and payable monthly at such time as the lease provides; when royalty on oil produced is paid in kind, such royalty oil shall be delivered in tanks provided by the lessee on

the premises where produced without cost to the lessor unless otherwise agreed to by the parties thereto, at such time as may be required by the lessor. The lessee shall not be required to hold such royalty oil in storage longer than 30 days after the end of the calendar month in which said oil is produced. The lessee shall be in no manner responsible or held liable for loss or destruction of such oil by causes beyond his control.

(b) The proceeds from all leases shall be taken up in the accounts of the superintendent for appropriate deposit for the benefit of the Indians.

§ 184.18 Free use of gas by lessor.

If the leased premises produce gas in excess of the lessee's requirements for the development and operation of said premises, then the lessor may use sufficient gas, free of charge, for any desired school or other buildings belonging to the tribe, by making his own connections to a regulator installed, connected to the well and maintained by the lessee, and the lessee shall not be required to pay royalty on gas so used. The use of such gas shall be at the lessor's risk at all times.

§ 184.19 Division orders.

(a) Lessees may make arrangements with the purchasers of oil for the payment of the royalties on production to the superintendent by such purchasers, but such arrangements, if made, shall not operate to relieve a lessee from responsibility should the purchaser fail or refuse to pay such royalties when due. Where lessees avail themselves of this privilege, division orders permitting the pipeline companies or other purchasers of the oil to withhold the royalty interest shall be executed and forwarded to the supervisor for approval, as pipeline companies are not permitted to accept or run oil from leased Indian lands until after the approval of a division order showing that the lessee has a lease regularly approved and in effect. When the lessee company runs its own oil, it shall execute an intracompany division order and forward it to the supervisor for his consideration. The right is reserved for the supervisor to cancel a division order at any time or require the pipeline company to discontinue to run the oil of any lessee who fails to operate the lease properly or otherwise violates the provisions of the lease, of the regulations in this part, or of the operating regulations.

(b) When oil is taken by authority of a division order, the lessee or his representatives shall be actually present when the oil is gaged and records are made of the temperature, gravity and impurities. The lessee will be held responsible for the correctness and the correct recording and reporting of all the foregoing measurements, which except lowest gage, shall be made at the time the oil is turned into the pipeline. Failure of the lessee to perform properly these duties will subject the division order to revocation.

CROSS REFERENCE: For oil and gas operating regulations of the Geological Survey, see 30 CFR Part 221.

OPERATIONS

§ 184.20 Permission to start operations.

(a) No operations will be permitted on any lease before it is executed by the Secretary of the Interior.

(b) Written permission must be secured from the supervisor or his representative before any operations are started on the leased premises. After such permission is secured the operations must be in accordance with the operating regulations promulgated by the Secretary of the Interior. Copies of the regulations in this part may be secured from either the supervisor or the superintendent, and no operations should be attempted without a study of the operating regulations.

§ 184.21 Restrictions on operations.

(a) All leases issued under the provisions of the regulations in this part shall be subject to imposition by the Secretary of the Interior of such restrictions as to time or times for the drilling of wells and as to the production from any well or wells as in his judgment may be necessary or proper for the protection of the natural resources of the leased land and in the interest of the lessor. In the exercise of his judgment the Secretary of the Interior may take into consideration, among other things, the Federal laws,

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State laws, regulations by competent Federal or State authorities, lawful agreements among operators regulating either drilling or production, or both, and any regulatory action desired by tribal authorities.

(b) All leases issued pursuant to the regulations in this part shall be subject to a co-operative or unit development plan affecting the leased lands if and when required by the Secretary of the Interior, but no lease shall participate in any cooperative or unit plan without prior approval of the Secretary of the Interior.

§ 184.22 Diligence and prevention of waste.

The lessee shall exercise diligence in drilling and operating wells for oil and gas on the leased lands while such products can be secured in paying quantities; carry on all operations in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land, or the entrance of water through wells drilled by the lessee to the productive sands or oil or gas-bearing strata to the destruction or injury of the oil or gas deposits, the preservation and conservation of the property for future productive operations, and to the health and safety of workmen and employees; plug securely all wells before abandoning the same and to shut off effectually all water from the oil or gas-bearing strata; not drill any well within 200 feet of any house or barn on the premises without the lessor's written consent; carry out at his expense all reasonable orders and requirements of the supervisor relative to prevention of waste, and preservation of the property and the health and safety of workmen; bury all pipelines crossing tillable lands below plow depth unless other arrangements therefor are made with the superintendent; pay all damages to crops, buildings, and other improvements on the premises occasioned by the lessee's operations: *Provided*, That the lessee shall not be held responsible for delays or casualties occasioned by causes beyond his control.

§ 184.23 Wells.

The lessee shall agree (a) to drill and produce all wells necessary to offset or protect the leased land from drainage by wells on adjoining lands not the property of the lessor, or in lieu thereof, compensate the lessor in full each month for the estimated loss of royalty through drainage: *Provided*, That during the period of supervision by the Secretary of the Interior, the necessity for offset wells shall be determined by the supervisor and payment in lieu of drilling and producing shall be with the consent of, and in an amount determined by the Secretary of the Interior; (b) at the election of the lessee to drill and produce other wells: *Provided*, That the right to drill and produce such other wells shall be subject to any system of well spacing or production allotments authorized and approved under the applicable law or regulations, approved by the Secretary of the Interior and affecting the field or area in which the leased lands are situated; and (c) if the lessee elects not to drill and produce such other wells for any period the Secretary of the Interior may, within 10 days after due notice in writing, either require the drilling and production of such wells to the number necessary, in his opinion, to insure reasonable diligence in the development and operation of the property, or may in lieu of such additional diligent drilling and production require the payment on and after the first anniversary date of the lease of not to exceed $1 per acre per annum, which sum shall be in addition to any rental or royalty herein specified.

§ 184.24 Penalties.

Failure of the lessee to comply with any provisions of the lease, of the operating regulations, of the regulations in this part, orders of the superintendent or his representative, or of the orders of the supervisor or his representative, shall subject the lessee to a penalty of not more than $500 per day for each day the terms of the lease, the regulations, or such orders are violated: *Provided*, That the lessee shall be entitled to notice, and hearing within 30 days after such notice, with respect to the terms of the lease, regu-

lations, or orders violated, which hearing shall be held by the supervisor, whose findings shall be conclusive unless an appeal be taken to the Secretary of the Interior within 30 days after notice of the supervisor's decision, and the decision of the Secretary of the Interior upon appeal shall be conclusive.

§ 184.25 Inspection of premises, books and accounts.

Lessee shall agree to allow the lessor and his agents or any authorized representative of the Interior Department to enter, from time to time, upon and into all parts of the leased premises for the purposes of inspection and shall further agree to keep a full and correct account of all operations and make reports thereof, as required by the applicable regulations of the Department; and their books and records, showing manner of operations and persons interested, shall be open at all times for examination of such officers of the Department as shall be instructed in writing by the Secretary of the Interior or authorized by regulations, to make such examination.

§ 184.26 Assignments and overriding royalties.

(a) Leases, or any interest therein, may be assigned or transferred only with the approval of the Secretary of the Interior, and to procure such approval the assignee must be qualified to hold such lease under existing rules and regulations, and shall furnish a satisfactory bond for the faithful performance of the covenants and conditions thereof. No lease or any interest therein, or the use of such lease, shall be assigned, sublet, or transferred directly or indirectly, by working or drilling contract, or otherwise without the consent of the Secretary of the Interior. Assignments of leases shall be filed with the superintendent within 20 days after the date of execution.

(b) An agreement creating overriding royalties or payments out of production under this part shall be subject to the provisions of § 171.26(d) of this chapter, or as hereafter amended.

[22 FR 10622, Dec. 24, 1957, as amended at 23 FR 9759, Dec. 18, 1958]

§ 184.27 Stipulations.

The lessee under any lease heretofore executed may be stipulation (Form 5-154i), with the consent of the lessor, make such lease subject to all the terms, conditions, and provisions contained in the lease form currently in use. Stipulations shall be filed with the superintendent within 20 days after the date of execution.

§ 184.28 Cancellations.

Leases shall be irrevocable except for breach of the terms and conditions of the same and may be forfeited and cancelled by an appropriate proceeding in the United States District Court for the District of Wyoming whenever the lessee fails to comply with their terms and conditions; the lessee may, on approval of the Secretary of the Interior, surrender a lease or any part of it:

(a) That he make application for cancellation to the superintendent having jurisdiction over the land.

(b) That he pay a surrender fee of $1 at the time the application is made.

(c) That he pay all royalties and rentals due to the date of such application.

(d) That he make a satisfactory showing that full provision has been made for conservation and protection of the property and that all wells, drilled on the portion of the lease surrendered, have been properly abandoned.

(e) If the lease has been recorded, that he file, with his application, a recorded release of the acreage covered by the application.

(f) If the application is for the cancellation of the entire lease or the entire undivided portion, that he surrender the lease: *Provided*, That where the application is made by an assignee to whom no copy of the lease was delivered, he will be required to surrender only his copy of the assignment.

(g) If the lease (or portion being surrendered or canceled) is owned in undivided interests by more than one party, then all parties shall join in the application for cancellation.

(h) That all required fees and papers must be in the mail or received on or before the date upon which rents and

royalties become due, in order for the lessee and his surety to be relieved from liability for the payment of such royalties and rentals.

(i) In the event oil or gas is being drained from the leased premises by wells not covered by the lease; the lease, or any part of it may be surrendered, only on such terms and conditions as the Secretary of the Interior may determine to be reasonable and equitable.

§ 184.29 Fees.

Unless otherwise authorized by the Secretary of the Interior or his authorized representative, each lease, sublease, or assignment shall be accompanied at the time of filing by a fee of $10.

(Sec. 1, 41 Stat. 415, as amended; 25 U.S.C. 413)

[24 FR 7949, Oct. 2, 1959]

§ 184.30 Forms.

The provisions of § 171.30 of this chapter, or as hereafter amended are applicable to this part.

[24 FR 7949, Oct. 2, 1959]

SUBCHAPTER R—IRRIGATION PROJECTS

PART 191—OPERATION AND MAINTENANCE

Sec.

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AUTHORITY: Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U.S.C. 385. Sec. 191.4(b) also issued under 34 Stat. 1024, 38 Stat. 583, and 68 Stat. 1026. Secs. 191.4(a), 191.4(c), 191.16(b), and 191.17(f) also issued under sec. 11, 39 Stat. 142.

SOURCE: 42 FR 30362, June 14, 1977, unless otherwise noted.

§ 191.1 Administration.

(a) The Agency Superintendent, Project Engineer or such official as authorized by the Area Director is the Officer-in-Charge of those Indian Irrigation Projects or units operated or subject to administration by the Bureau of Indian Affairs, whether or not each project or unit is specifically mentioned in this part. The Officer-in-Charge is fully authorized to administer, carry out, and enforce these regulations either directly or through employees designated by him. Such enforcement includes the refusal to deliver water.

(b) The Officer-in-Charge is authorized to apply to irrigation subsistence units or garden tracts only those regulations in this part which in his judgment would be applicable in view of the size of the units and the circumstances under which they are operated.

(c) The Officer-in-Charge is responsible for performing such work and taking any action which in his judgment is necessary for the proper operation, maintenance and administration of the irrigation project or unit. In making such judgments, the Officer-in-Charge consults with water users and their representatives, and with tribal council representatives, and seeks advice on matters of program priorities and operational policies. The Officer-in-Charge will be guided by the basic requirement that the operation will be so administered as to provide the maximum possible benefits from the project's or unit's constructed facilities. The operations will insure safe. economical, beneficial, and equitable use of the water supply and optimum water conservation.

(d) The Secretary of the Interior reserves the right to exercise at any time all rights, powers, and privileges given him by law, and contracts with irrigation districts within Indian Irrigation Projects. Close cooperation between the Indian tribal councils, the project water users and the Officer-in-Charge is necessary and will be to the advantage of the entire project.

(e) The Area Director, or his delegated representative, is authorized to fix as well as to announce, by notice published in the FEDERAL REGISTER, the annual operation and maintenance assessment rates for the irrigation projects or units within his area of responsibility. In addition to the rates, the notices will include such information as is pertinent to the assessment, payment, and collections of the charges including penalties and duty of water.

(f) The rates will be based on a carefully prepared estimate of the cost of the normal operation and maintenance of the project. Normal operation and maintenance is defined for this purpose as the average per acre cost of all activities involved in deliver-

ing irrigation water and maintaining the facilities.

(g) San Carlos Irrigation Project, Arizona. The administration, rights obligations and responsibilities for the operation and maintenance of this project are set forth in the Repayment Contract dated June 8, 1931 as supplemented or amended, between the San Carlos Irrigation and Drainage District and the United States as authorized by the Act of June 7, 1924 (43 Stat. 475-476) and the Secretarial Order of June 15, 1938, title "order Defining Joint, District and Indian Works of the San Carlos Federal Irrigation Project: Turning over Operation and Maintnenace of District Works to the San Carols Irrigation and Drainage District." The regulations appearing in this subchapter apply only to the Indian lands works and in the San Carlos Irrigation Project unless specified otherwise, and should not be interpreted or construed as amending or modifiying the District Contract or the Secretarial Order.

[42 FR 30362, June 14, 1977, as amended at 43 FR 8799, Mar. 3, 1978]

§ 191.2 Irrigation season.

The irrigation season, when water shall be available for irrigation, will be established by the Officer-in-Charge.

§ 191.3 Domestic and stock water.

Domestic or stock water will not be carried in the project's or unit's irrigation system when in the judgment of the Officer-in-Charge such practice will:

(a) Interfere with the operation and maintenance of the system.

(b) Be detrimental to or endanger the canal, lateral system and/or related structures.

(c) Adversely affect the stored water supply for irrigation.

§ 191.4 Farm units.

For the purpose of delivery of water and the administration of the project or unit, a farm unit is defined as follows:

(a) For the Blackfeet, Crow, Fort Belknap, and Fort Peck Irrigation Projects, Montana, and the Colville Irrigation Project, Washington.

(1) Forty (40) or more contiguous acres of land in single ownership with the exception that those original Indian allotments containing less than 40 irrigable acres of the same subdivision of the public land survey shall also be considered farm units.

(2) Forty (40) or more contiguous acres of Indian-owned land under lease to one party.

(3) Forty (40) contiguous acres in multiple ownership within the same forty (40) acre subdivision of the public land survey.

(b) For the Fort Hall Irrigation Project, Idaho:

(1) Twenty (20) or more contiguous acres of land in single ownership covered by one or more water rights contracts.

(2) Twenty (20) or more contiguous acres of Indian-owned land under lease to one party or being farmed by one Indian.

(3) Ten (10) or more contiguous acres of subdivided land in multiple ownership.

(c) For the Flathead Irrigation Project, Montana: A contiguous area of land in single ownership containing not less than one forty (40) acre subdivision of the public land survey, or the original allotment as established by the Secretary of the Interior and as recorded or amended in the records of the Bureau of Land Management. In the case of leased land, it is defined as a contiguous area under a single lease. For Bureau of Land Management regulations pertaining to Flathead Project, see 43 CFR 2211.8, Flathead Irrigation District, Montana.

(d) For the Wapato Irrigation Project (all units), Washington:

(1) Eighty (80) or more contiguous acres in single ownership at the time of the establishment of the delivery system, or when subsequent changes of ownership result in larger tracts under single ownership and the owner requests that this land be treated as a farm unit, whether covered by one or more water right contracts.

(2) Eighty (80) or more contiguous acres of Indian-owned land under lease to one person or being farmed by one Indian.

(3) Eighty (80) contiguous acres in multiple ownership: *Provided,* That

such acreage shall be within the same eight (80) acre subdivision of the U.S. public land survey.

(4) In all cases where an original Indian allotment consisted of less than eighty (80) contiguous acres, such original Indian allotment, whether (i) under single or multiple ownership and/or covered by one or more water right contracts, (ii) under lease to the same or different lessees, or (iii) farmed by one or more Indians, shall be treated as a farm unit.

(e) For all other projects or units: An original allotment, homestead, an assignment of unallotted tribal lands, or a contiguous, development lease area.

§ 191.5 Delivery points.

(a) Project operators will deliver irrigation water to one point on the boundary of each farm unit within the irrigation project. The Officer-in-Charge may establish additional delivery points when in his judgment it is impractical for the landowner to irrigate his farm unit from the one delivery point for such reasons as topography, isolation, or cost. When irrigation water is supplied from wells, the delivery point may be established at the well head. Where portions of a farm unit lie at an elevation too high to be watered by gravity flow from the normal elevation of water in the project distribution system, no change will be made in the water level elevation of the project system so as to place water on such land. Where such land has been included in the project, the landowner may install and operate pumping equipment at his own expense to raise the water to such included land from a point designated by the Officer-in-Charge and in accordance with his specifications. If the landowner so installs pumping equipment and pays the construction and maintenance charges, the project will deliver the same amount of water per acre for this land as the project delivers at the delivery point for other lands on the project.

(b) If a farm unit for which a project delivery point has been established is subsequently subdivided into smaller units by the owner or owners of the farm unit, the following provisions apply:

(1) A plat or map of the subdivision must be recorded and a copy filed with the Officer-in-Charge. The plat or map must show how the irrigation water is to be delivered to the irrigable acres in the subdivision.

(2) No further extensions or alterations in the project's system will be provided officials to serve the subdivided units, except as agreed to by the Officer-in-Charge and at the landowner's expense.

(3) Any additional construction necessary to deliver irrigation water to these units must be mutually worked out between the original owner of the farm units and the new owners of the subdivided unit at their expense.

(4) The project will not bear any responsibility for the operation and maintenance of such internal systems, or the division of irrigation water after it is delivered to the established project delivery points.

(c) Where project points of delivery have been established for farm units which are to be combined under lease or ownership into a singular farm unit to be irrigated by means of a sprinkler of more efficient system, the Officer-in-Charge may approve the removal or relocation of project delivery facilities. Such reorganization shall be at the expense of the landowners or lessees in conformance with established project standards and a time schedule which will not disrupt water delivery service to others on the system.

(d) Where a reorganization has been approved and established as in § 191.5(c), any reversion requiring reestablishment of removed or relocated project delivery facilities must be approved by the Officer-in-Charge and conform to established project standards and time schedules which will not disrupt water delivery service to other water users on the system. All expenses incurred shall be the responsibility of the landowners or lessees.

§ 191.6 Distribution and apportionment of water.

(a) The Officer-in-Charge will establish the method of and procedures for the delivery and distribution of the available irrigation water supply. He

will endeavor to apportion the water at all times on a fair and equitable basis between all project water users entitled to the receipt of irrigation water.

(b) Any person who interferes with the flow of water in or from the project's storage, carriage or lateral systems or opens or closes or in any other way changes the position of a headgate or any other water control structure without specific authority from the Officer-in-Charge or his designated representative will be subject to prosecution. Cutting a canal or lateral bank for the purpose of diverting water or placing an obstruction in such facilities in order to change the flow of water through a headgate will be considered a violation of this section.

(c) San Carlos Irrigation Project, Arizona.

(1) The portion of the project's common water supply available for the Indian lands will be distributed subject to beneficial use in equal per acre amounts to each acre under irrigation and cultivation, insofar as possible.

(2) All water users (Indian and non-Indian) will be notified at the beginning of the irrigation season of the amount of stored and pumped water available. An apportionment of this water will be recommended by the Officer-in-Charge of the irrigation project to the approval of the Area Director. Subsequent apportionments may be made if and when additional water is available.

(3) If it is determined by the Officer-in-Charge that there is water in excess of demands and available storage facilities, he will promptly notify all water users that such water is available. This water shall not be charged against the water apportionment of the land on which it is used.

(d) Uintah Irrigation Project, Utah.

(1) Water will be delivered to all lands under the Lakefork, Uintah and Whiterocks Rivers in accordance with the provisions of the decree of the Federal Court in the cases of the "United States v. Dry Gulch Irrigation Company, et al.," and the "United States v. Cedarview Irrigation Company, et al.," which decrees fix the maximum duty of three (3) acre-feet per acre for the period from March 1 to November 1 of each year. The rate of delivery will be substantially in accordance with the following schedule except that it may be modified by the Officer-in-Charge at such times as changed climatic conditions and the water supply indicate that such modification would be beneficial to the project:

Period	Acres per second-feet	Acre feet per acre
Mar. 1 to 18	None	None
Mar. 19 to 31	1,000	0.023
Apr. 1 to 10	800	.025
Apr. 11 to 20	400	.050
Apr. 21 to 30	200	.099
May 1 to 10	180	.110
May 11 to 20	135	.147
May 21 to 31	95	.229
June 1 to 20	70	.566
June 21 to 31	85	.233
July 1 to 10	90	.220
July 11 to 20	95	.208
July 21 to 31	100	.218
Aug. 1 to 10	133	.147
Aug. 11 to 20	155	.128
Aug. 21 to 31	175	.124
Sept.1 to 10	195	.101
Sept. 11 to 30	220	.180
Oct. 1 to 10	220	.090
Oct. 11 to 20	300	.066
Oct. 21 to 31	600	.036
Total		3,000

(2) The rotation method will be used in distributing the water diverted from the Lakefork, Uintah and Whiterocks Rivers. Rotation schedules will be prepared under direction of the Officer-in-Charge and will be put into effect each season as soon as it is determined what acreage is to be irrigated. A written copy of the water schedule will be delivered to each water user showing

the time that his turn starts on each tract and the duration of each turn.

(3) In the event a rotation system is adopted for lands receiving water from the Duchesne River, the same procedure will be used as for the lands under the Lakefork, Uintah and Whiterocks Rivers. The Officer-in-Charge will advise all water users sufficiently in advance of the time the rotation schedule will go into effect.

(e) Wapato Irrigation Project, Washington.

(1) To protect adjoining lands against seepage and erosion by the excess use of water on the bench lands of the Wapato-Satus Unit, the maximum delivery of water to the bench lands shall not exceed 4.5 acre-feet per acre per season.

(2) The rate of delivery to lands of the Satus 2 and Satus 3 subunits shall not exceed one (1) cubic foot per second for each 50 irrigated acres.

(3) The measurement and distribution of water for the lands on the Ahtanum Unit shall take place at the mutually advantageous points on the Ahtanum Main or Lower Canals. The conveyance of the water from these points of distribution to the irrigable acres of the farm units shall be entirely by and at the expense of the individual operators of the farms. However, when several such users join together to use one single channel for the conveyance of their water to the points of final diversion, they shall be jointly responsible for the channel of conveyance and the apportionment of the water to their respective farm units.

§ 191.7 Application for and record of deliveries of irrigation water.

(a) Except when rotation schedules have been established and are being followed, water users in requesting the delivery of water will so notify the Officer-in-Charge or his designated representative by such means and with such advance notice as may be required by system operations and as established by the Officer-in-Charge. The request shall indicate the time the water is to be delivered, the period of time it will be used, the rate of flow desired, and where the water will be used.

(b) It is the responsibility of the ditchriders during the irrigation season to maintain records showing the beginning and ending time of each water delivery, the amount of such delivery, and the estimated acreage irrigated. Such records are to be filed at the irrigation project office at the end of the season.

(c) Water users on the Indian portion of the San Carlos Indian Irrigation Project will submit their requests for water to the Superintendent, Pima Agency.

§ 191.8 Surface drainage.

(a) The water users will be responsible for all waste water resulting from their irrigation practices and for its conveyance to project canals, drains, wasteways or natural drainage channels. Any expenses involved in doing this will be borne by the water user. Waste water may be emptied into project constructed ditches only at points designated by and in a manner approved by the Officer-in-Charge. In those situations involving two or more landowners and/or water users, it is their responsibility to work out a satisfactory arrangement among themselves for the conveyance of their waste water to project ditches or natural drainage channels.

(b) Waste water shall not be permitted to flow upon or collect in road or project rights-of-way. Failure to comply with this requirement could result in the Officer-in-Charge refusing the further delivery of water.

§ 191.9 Structures.

(a) All structures, including bridges or other crossings, which are necessary as a part of the project's irrigation and drainage system will be installed and maintained by the project.

(b) During the construction of a new irrigation project or the extension of

an existing project, bridges, crossings or other structures may be built by the Office: -in-Charge for private use where justified by severance agreements or other practical considerations. Title to these structures may or may not be vested in the United States depending upon the agreement with the landowner. Structures built partially or wholly in lieu of severance damages may be required to be maintained by the landowner even though title remains with the United States.

(c) After a project is completed, additional structures crossing or encroaching on project canal, lateral or drain rights-of-way which are needed for private use may be constructed privately in accordance with plans approved by the Officer-in-Charge or by the project. In either case the cost of installing such structures will not be at the project's expense. Such structures will be constructed and maintained under revocable permits on proper forms issued by the Officer-in-Charge of the irrigation project to the party or parties desiring such structures.

(d) It it is determined that a crossing constructed for and by the project is no longer needed for operation and maintenance of the system. It should be removed. However, if a private party, corporation, State, or other Federal entity desires to use the crossing, it may be transferred to such entity by the Officer-in-Charge under a permit which relieves the United States from any further liability or responsibility for the crossing, including its maintenance. The following provisions pertain:

(1) Permits issued in such situations shall stipulate what is granted, and accepted by the permittee on the condition that the repair and maintenance of the structure shall be the duty of the permittee or his successors without cost to the irrigation project.

(2) The permit shall further provide that if any such structure is not regularly used for a period of one year or is not properly maintained, the Officer-in-Charge may notify the person responsible for the structure's maintenance either to remove it or to correct any unsafe conditions within a period of 90 days.

(3) If the structure is not removed or the unsafe condition corrected within the time allowed, it may be removed by the Officer-in-Charge, the cost of such removal to be paid by the party responsible for the maintenance of the structure.

§ 191.10 Fencing.

Fences across project rights-of-way will not be constructed without the approval of the Officer-in-Charge. The granting of such approval shall be dependent upon proper installation so as not interfere with the flow of water or the passage of project operators and equipment. In case an unauthorized fence is installed, the landowner shall be notified to remove it. If it is not removed within a reasonable period of time or satisfactory arrangements made with the Officer-in-Charge, it may be removed by project personnel at the landowner's expense.

§ 191.11 Obstructions.

No obstructions of any kind including service or farm ditches, will be permitted upon project rights-of-way. Due notice will be given to an operator or landowner to remove any obstructions. If not removed within a reasonable period of time after notice is given, an obstruction will be removed by project forces at the expense of the operator or landowner.

§ 191.12 Rights-of-way.

(a) Rights-of-way reserved for the project's irrigation system are of sufficient width to permit passage and use of equipment necessary for construction and proper operation and maintenance of the project's canals, laterals, and other irrigation works.

(b) In the construction of new irrigation projects or extension of existing projects, rights-of-way which have not been reserved across Indian lands will be obtained in accordance with Part 161 of this chapter.

§ 191.13 Crops and statistical reports.

An annual project crops and statistical report shall be prepared by the Officer-in-Charge. The landowner or farm unit operator shall cooperate in furnishing such information as requested.

§ 191.14 Carriage agreements and water right applications.

(a) *Pine River Indian Irrigation Project, Colorado.* If the Area Director determines that there is sufficient capacity in the project's carriage and/or distribution system in excess of that required by the project he is authorized to enter into carriage agreements with non-project water users to convey non-project water through project facilities for delivery to non-project lands.

(b) *Uintah Indian Irrigation Project, Utah.* If the Superintendent determines that there is sufficient capacity in the irrigation project's carriage and/or distribution system in excess of that required by the project, he is authorized to enter into carriage agreements with non-project water users to convey non-project lands. The Superintendent is also authorized to enter into carriage agreements with private irrigation or ditch companies for the conveyance of project water through non-project facilities for delivery to isolated Indian lands that cannot be served from project facilities.

(c) *Wapato Irrigation Project, Washington.* The Project Engineer is authorized to execute water right applications submitted by landowners in the project on behalf of the Secretary of the Interior. Such applications should be submitted on the approved Departmental form.

§191.15 Leaching water.

(a) The Officer-in-Charge is authorized to furnish irrigation water for leaching purposes without the payment of operation and maintenance charges to any Indian trust land, or patent in fee land covered by a repayment contract, as an aid to improve land within the project that is impregnated by alkali or in the development of new project land.

(b) Delivery of such water will depend upon the availability of water and the preparation of a definite plan of operation by the land operator satisfactory to the Officer-in-Charge. In addition, the operator shall agree to meet such reasonable leaching and cropping activities as shall be prescribed by the Officer-in-Charge.

(c) If prompt and beneficial use of the leaching water is not made by or before July 1 of the season for which it is granted, the Officer-in-Charge may declare the leaching permit forfeited. The normal water charges will be considered as assessed and any delinquency enforced as though no leaching privilege had been granted.

(d) In the case of patent in fee lands no water will be delivered for leaching purposes until the annual construction costs, when assessed, are paid.

§ 191.16 Excess water.

(a) *General.* On those irrigation projects where a water duty or water quota has been established each water user will be notified when his quota of water, as covered by the basic assessment and as announced in the public notice, has been delivered. In such cases, additional irrigation water, if available, may be delivered providing the water user so requests it and agrees to pay for the excess water in accordance with the excess water provisions as set forth in the public notice.

(b) *Flathead Indian Irrigation Project, Montana.* (1) After an agreement has been reached by the Commissioners of the irrigation district and the Officer-in-Charge as to the duty of water on individual tracts where water users claim excess requirements above the duty of water established for the project on account of porous or gravelly soils, the Officer-in-Charge is authorized to increase the quantity of water to be delivered to such tracts.

(2) The amount of water delivered in such cases will not exceed four (4) acre feet per assessable acre except in the Moiese Division where the amount shall not exceed six (6) acre feet providing there is sufficient water available in Lower Crow Reservoir without having to draw on the water supply for the Mission Valley Division.

(3) The charge for such water shall be at the same general rate as established for project land not having such a porous or gravelly condition.

§ 191.17 Delivery of water.

(a) Irrigation water will not be delivered until the annual operation and maintenance assessments are paid in

accordance with the established annual rate schedule as set forth in the public notice issued by the Area Director. Under the following special circumstances, this rule may be waived and water delivered to:

(1) Trust and restricted lands farmed by the Indian owner when the Superintendent has certified that the operator is financially unable to pay the assessment and he has made arrangements to pay such assessments from the proceeds received from the sale of crops or from any other source of income. In such cases the unpaid charges will stand as a first lien against the land until paid but without penalty on account of deliquency.

(2) Non-Indian lands on which there is an approved deferred payment contract executed under the provisions of the Act of June 22, 1936 (49 Stat, 1803).

(3) Land on which an adjustment or cancellation of unpaid assessments has been recommended and final action is pending.

(b) Water will not be delivered to Indian trust or restricted land that are under lease approved by the Secretary of the Interior or his authorized representative acting under delegated authority until the lessee has paid the annual assessed operation and maintenance charges.

(c) No water will be delivered to Indian trust land under a lease that has been negotiated by an Indian owner until the owner has paid the annual assessed operation and maintenance charges or has made satisfactory arrangements for their payment with the Superintendent who has so notified the Officer-in-Charge.

(d) Water will not be delivered to any lands within an irrigation district which has executed a repayment contract with the United States until all irrigation charges, as assessed, are paid in accordance with the terms and conditions of the contracts and the public notice as issued by the Area Director.

(e) All irrigation districts may make such rules and regulations as they may find necessary in regard to the delivery of the water to water users within the district who are delinquent in their payments to the district of assessed irrigation charges. Such rules and regulations will be adhered to by the Officer-in-Charge when it appears to be in the best interests of the United States and the district to do so.

(f) Water will not be delivered to lands that are subject to construction assessments not paid in accordance with Part 211 of this chapter.

(g) Flathead Indian Irrigation Project, Montana.

(1) *Secretarial Water Right Holders.* (i) For all acres recognized by the Secretary of the Interior as entitled to a "Secretarial Water Right", the Officer-in-Charge is authorized to carry such water in the project's carriage and distribution system and deliver it: *Providing,* That landowner holding such a right requests it and his land is so located that the water can be delivered without undue expense to the project. Before this service is provided, the landowner must also agree to pay a minimum of fifty (50) percent of up to a maximum of one hundred (100) percent of the annual operation and maintenance charges as assessed against project lands in the same general area as his. Under such agreement the project will not be obligated to deliver more than that allowed for each acre of land under the Secretary's private water right findings less a proportionate share of the project's normal losses in transporting the water from the point of entry into the project's system to the point of delivery.

(ii) "Secretarial Water Rights" are defined as those rights allocated to Indian allotments by the Assistant Secretary of the Interior by his approval on November 25, 1921, of the findings of the Commission appointed by him to investigage the "private rights" on the Flathead Indian Reservation. Authority: Sec. 9, Act of May 29, 1908 (35 Stat. 449).

(2) *Pump Lands—Flathead Irrigation Project.* (i) The Officer-in-Charge is authorized to deliver irrigation water to lands (pump lands) within a project farm unit that are too high to be served from the project's gravity flow system: *Providing,* The holder of legal title to the lands so requests it in writing and agrees to have such land designated by the Secretary of the Interior or his authorized representative

as a part of the irrigation project. Land so designated shall be subject to the assessment and payment of the pro rata per acre share of the project's construction, operation and maintenance costs the same as all other lands within the irrigation project in the same general area. In addition, such "pump lands" shall be obligated to pay an additional assessment on an annual basis as determined by the Officer-in-Charge to defray the cost of pumping the water from the Flathead River for those lands in the Mission Valley Division, and from the Little Bitterroot Lake for lands in the Camas Division.

(ii) At the time he submits the request, the landowner must also agree in writing to include the "pump lands" in an existing irrigation district or a district that may be subsequently formed pursuant to the laws of the State of Montana. This will not apply to Indian trust or restricted lands as such lands cannot be included within an irrigation district.

(iii) A request for the inclusion of "pump lands" into the project will not be considered until the Officer-in-Charge determines that there is sufficient project water available to serve these lands without adversely affecting in any way the water entitlement of the designated project lands for which the project was designed and constructed.

(iv) All costs incidental to the pumping and distribution of the delivered water from the project farm unit delivery point to the "pump lands" shall be borne by the landowner.

§ 191.18 Service or farm ditches.

The service or farm ditches into which water is delivered from project canals or laterals must have ample capacity and be maintained by the water user in proper condition to receive water and convey it to the place of use with a minimum of loss. Water delivery will be refused to such ditches not satisfactorily maintained. Project irrigation water shall be put to beneficial use.

§ 191.19 Operation and maintenance assessments.

(a) Operation and maintenance assessments will be levied against the acreage within each allotment, farm unit or tribal unit that is designated as assessable and to which irrigation water can be delivered by the project operators from the constructed works whether water is requested or not, unless specified otherwise in this section.

(1) *Colville Indian Irrigation Project, Washington.* Operation and maintenance assessments will be levied against all patent in fee and Indian trust lands to which water can be delivered for irrigation and for which an application for water has been made by the water user and approved by the Superintendent.

(2) *Wapato Irrigation Project-Toppenish-Simcoe Unit, Washington.* Operation and maintenance assessments will be levied against all lands which can be irrigated from the constructed works for which application for water is made annually and approved by the Project Engineer.

(b) Subdivided farm units. (1) *General.* (i) Where farm units, as defined in § 191.4 have been subdivided into smaller units, the Area Director or such official as he may so delegate may, at his discretion, fix a higher operation and maintenance rate for such subdivided acreage than the rate fixed for the acreage in the original farm unit. In such cases the higher rate will also be announced in the annual public notice.

(ii) In the event higher rates are fixed for a subdivided farm unit, the individual owners thereof may obtain for their lands the same rate as fixed for acreages within farm units not so divided by joining in a written contract with the other owners within the subdivided unit. Under such a contract, the various owners will appoint an agent in whom shall be vested full power and authority to enter into a contract with the Area Director, hereafter referred to as the Contracting Officer, or such official as he may so authorize, covering the water rights for the entire area of the several small acreages: *Provided, however,* Such contract must not represent less acreage than that included in the original farm unit unless a smaller unit has been established by project regulation as eligible for a subdivision contract;

And provided further, That whether the contract involves acreage in one or more farm units, it must represent contiguous acreages.

(iii) The contract between the agent of the owners of the small tracts and the Contracting Officer shall be executed on or before February 1 of the year preceding the next irrigation season. The agent shall at the time of the execution of this contract, on a form approved by the Secretary of the Interior, furnish a certified copy of the contract executed by the several landowners of the subdivided tract appointing the agent to act in their behalf.

(iv) Any owner of a tract within a subdivided unit, with the written consent of the owners of a majority of the acreage, under a contract as set forth in paragraph (b)(1)(iii) of this section, may voluntarily withdraw from the contract by filing a written notice of his intent to withdraw with the Contracting Officer on or before February 1 of the year, such withdrawal is to be effective, together with the consent of the owners of the majority of the acreage endorsed thereon; *Provided,* That, the remaining acreage is contiguous; such withdrawal does not reduce the remaining acreage under the contract to less than the acreage included in the original farm unit before it was subdivided or less than the minimum acreage established on a project as eligible for a subdivision contract; and all irrigation charges due under said contract have been paid. Upon the receipt of said notice, the Contracting Officer, if the notice meets the requirements as herein provided, shall note his approval thereon and send a copy thereof to the agent of the landowners. Thereafter the land of the withdrawing owner shall no longer be subject to the contract.

(v) If one or more owners under a contract desire to withdraw, and if, by so doing, it would reduce the total remaining contiguous acreage under the contract to less than the total acreage included in the original farm unit, or the minimum eligible acreage established on the project, the contract can be terminated. However, before such a termination can be approved, a written notice from the owners of the majority of the acreage must be filed with the Contracting Officer indicating their consent to and requesting his approval of the termination. The notice must be filed on or before February 1 of the year the termination is to become effective, and must include the payment of any irrigation charges then due under the existing contract. Upon the receipt of the written notice, the contracting Officer shall note his approval thereon provided that the requirements set forth herein are satisfied. A copy of the approved notice will be given to the agent of the landowners concerned.

(2) *Fort Hall Irrigation Project.* The Superintendent, Fort Hall Agency, is authorized to approve contracts as set forth in this section as well as withdrawals or termination of such contracts. However, no contracts will be entered into if the total contiguous acreage is less than 10 acres.

(3) *Wapato Irrigation Project.* The Project Engineer is authorized to approve contracts as set forth in paragraph (b) of this section, as well as withdrawals or termination of such contracts. However, no contracts will be entered into if the total contiguous acreage is less than 40 acres.

§ 191.20 Water users' ledgers.

(a) Water users' ledgers will be maintained by the Officer-in-Charge on all irrigation projects or units where irrigation assessments are levied and collected. Separate entries shall be made in the ledger for each farm tract, and bills issued to the owner or owners of record. When payment is received, it will be credited to the proper ledger account.

(b) When Indian trust or restricted land is leased and the Officer-in-Charge has been so advised by the Superintendent, irrigation bills will be submitted to the lessee. Upon receipt of payment, it will be credited to the Indian owner or owners of record in the ledger account.

(c) On those projects where irrigation districts have been formed and have executed repayment contracts, irrigation bills will be rendered to the district. When payment is received, it will be credited to the proper ledger accounts.

§ 191.21 Health and sanitation.

Use of Government storage reservoirs, canals, laterals or drains for disposal of sewage and trash shall not be permitted under any circumstances. If such conditions occur, and project forces are unable to correct them, the Officer-in-Charge shall request the Area Director to arrange for the necessary legal action.

§ 191.22 Complaints.

All complaints must be made in writing to the Project Engineer or the Officer-in-Charge of the project.

§ 191.23 Disputes.

In case of a dispute between a water user and the Project Engineer or Officer-in-Charge of the project concerning the application of the regulations of this part or a decision rendered by such official, the water user within 30 days may appeal to the Area Director. Further appeals may be made to the Commissioner of Indian Affairs pursuant to Part 2 of this chapter.

PART 202—PUEBLO INDIAN LANDS BENEFITED BY IRRIGATION AND DRAINAGE WORKS OF MIDDLE RIO GRANDE CONSERVANCY DISTRICT, NEW MEXICO

§ 202.1 Acreage designated.

Pursuant to the provisions of the act of March 13, 1928 (45 Stat. 312) the contract executed between the Middle Rio Grande Conservancy District of New Mexico and the United States under date of December 14, 1928, the official plan approved pursuant thereto, as modified, and the terms of section 24 of a contract between said parties dated September 4, 1936, dealing among other things with the payment of operation and maintenance and betterment assessments by the United States to the District, and section 24 of a similar contract dated April 8, 1938 executed by the representative of the United States, on this date, it is found that a total of 20,242.05 acres of Pueblo Indian lands of the Pueblos of Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia and Isleta is susceptible of economic irrigation and cultivation and is materially benefited by the works constructed by said District. This acreage is designated as follows:

Lands with recognized water rights not subject to operation and maintenance or betterment charges by the District and designated as "now irrigated"—8,847

Lands classified as "newly reclaimed" lands (exclusive of the purchased area)—11,074.4

Lands classified as newly reclaimed lands (the area recently purchased)—320.65

Total irrigable area materially benefited—20,242.05

(45 Stat. 312)

[22 FR 10641, Dec. 24, 1957]

PART 203—CONCESSIONS, PERMITS AND LEASES ON LANDS WITHDRAWN OR ACQUIRED IN CONNECTION WITH INDIAN IRRIGATION PROJECTS

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AUTHORITY: 52 Stat. 193; 25 U.S.C. 390.

SOURCE: 22 FR 10642, Dec. 24, 1957, unless otherwise noted.

§ 203.0 Scope.

The regulations in this part are promulgated governing the granting of concessions, business, agricultural and grazing leases or permits on reservoir sites, reserves for canals or flowage areas, and other lands withdrawn or otherwise acquired in connection with the San Carlos, Fort Hall, Flathead

and Duck Valley or Western Shoshone irrigation projects.

§ 203.1 Terms used.

When used in this part "Secretary" refers to the Secretary of the Interior; "project" to the Federal Indian irrigation project on which concession, lease or permit is granted, and "project engineer" to the engineer in charge of said project.

§ 203.2 Project engineer's authority.

The project engineer is the official charged with the responsibility for the enforcement of this part. He is vested with the authority to issue temporary concession permits to applicants for periods not to exceed 30 days. All except temporary permits shall become effective when approved by the Secretary.

§ 203.3 Enforcement.

The project engineer shall enforce these and all project regulations now or hereafter promulgated by the Secretary. Willful violation or failure to comply with the provisions of this part and all proper orders of the project engineer shall be cause for revocation of the permit by the Secretary who shall be the judge of what constitutes such violation. The project engineer may suspend any permit for cause. The project engineer shall, immediately after suspending a permit, submit to the Secretary through the Commissioner of Indian Affairs a detailed report of the case, accompanied by his reasons for the action and his recommendations, for final action by the Secretary.

§ 203.4 Permits subject to existing and future rights-of-way.

Use by the permittee of any land authorized under this part shall be subject to the right of the Secretary to establish trails, roads and other rights-of-way including improvements thereupon or through the premises, and the right to use same by the public. No interference shall be permitted with the continued use of all existing roads, trails and other rights-of-way and improvements thereon.

§ 203.5 Plans, approval thereof.

No building or other structure shall be erected by permittee except in accordance with plans, specifications and locations approved by the project engineer. All premises and appurtenances shall be kept in a sanitary, safe and sightly condition.

§ 203.6 Stock grazing.

Permittees may graze upon lands covered by such permits, such stock as may be required in connection with the purposes for which the permit is issued subject to such restrictions and limitations as may be prescribed by the project engineer.

§ 203.7 Permits, transferable.

Permits may be transferred only with the approval of the Secretary.

§ 203.8 Applications.

All applications for permits must be made on the approved form. The project engineer will furnish copies of this form upon request. All applications must be executed in triplicate.

§ 203.9 Bonds.

Except in cases of temporary concession permits, leases, permits, and traders' licenses granted under Parts 151, 131, and 251 of this chapter, which are governed by the requirements of those parts, the applicant shall within 60 days after approval of the application furnish a surety bond for the faithful performance of the terms of the permit in an amount equal to the total sum accruing during the period of the permit. Such bond shall be executed by an approved surety company, or by at least three individual sureties, whose individual unencumbered assets are equal to double the amount of the bond. In the case of temporary concession permits, the permittee shall deposit at the time of receiving the permit, a sum equal to twice the rental, which sum shall, upon the expiration of the permit, be refunded to the permittee, if all the terms and conditions of the permit have been met; otherwise, such sum shall be retained as liquidated damages.

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§ 203.10 Payments.

Each permittee shall pay at the time of receiving the permit the first year's charge as fixed therein. When a permit extends over a period of years, the next and succeeding payments shall be due and payable annually in advance. The full amount accruing under a temporary permit shall be paid at the time the application is filed.

§ 203.11 Supervision of permittees' rates.

All rates or charges collected by a permittee for services rendered by the permittee in the operation of the concession granted under a permit, must be submitted through the project engineer to the Secretary for approval. Copies of the approved rate schedule shall be posted in at least two conspicuous places on the premises. Approved rates may not be changed without first obtaining in the same manner a change in the rate schedule. The Secretary shall have the right to readjust rates charged from time to time and to amend or change any permit issued. Failure to comply with the approved rates automatically makes the permit subject to cancellation.

§ 203.12 Services from project.

When the facilities of the project make it possible to supply water for domestic purposes, electricity or any other type of service to the permittee, the cost of connecting the project facilities shall be borne by the permittee and the work must be in accordance with standard practices and accepted by the project engineer, and as provided for in project regulations. All services rendered by the project to the permittee shall be paid for at the existing or modified schedule of rates; or if no schedule has been approved, at a rate to be approved by the Secretary which will reasonably reimburse the project for the cost of such services

§ 203.13 Permit not a lease.

Any permit issued under this part does not grant any leasehold interest nor cover the sale, barter, merchandising, or renting of any supplies or equipment except as therein specified. Any permittee who engages in trade with the Indians must also apply for and receive a trader's license as provided by Part 251 of this chapter.

§ 203.14 Further requirements authorized.

The project engineer is authorized to incorporate into any proposed permit to meet the needs of any particular case, subject to the approval of the Secretary, such further special requirements as may be agreed upon by him and the applicant, such requirements to be consistent with the general purposes of this part.

§ 203.15 Permittee subject to State law.

The holder of any permit issued under this part shall be subject to and abide by the laws and regulations of the United States and State laws if applicable to the conduct of the particular business or activity conducted by the permittee. Violations of this section shall render the permit void but shall not release the permittee from any obligations arising thereunder.

§ 203.16 Reserved area, Coolidge Dam.

No permit for any commercial business or other activity (except boating concessions confined to the Soda Spring Canyon) shall be issued to any applicant to operate within a radius of three-fourths of a mile from the center of the Coolidge Dam, Arizona.

§ 203.17 Agricultural and grazing permits and leases.

(a) Permits or leases may be granted after the lands set forth in § 203.0 have been classified as to use and then only for the purpose for which the land is classified. Permits for grazing lands suitable for division into range units shall be granted in accordance with Part 151 of this chapter; and agricultural lands and all other grazing lands shall be leased in accordance with Part 151 of this chapter.

(b) Lands for which leases or permits are granted pursuant to the terms and conditions of this part shall not be eligible for benefit payments under the provisions and conditions of the Crop Control and Soil Conservation Act of April 27, 1935 (49 Stat. 163; 16 U.S.C. 590a), as amended by the act of February 29, 1936 (49 Stat. 1148; 16 U.S.C.

590g), and subsequent amendatory acts.

§ 203.18 Term and renewal of permits.

No concession granted under the provisions of this part shall extend for a period in excess of 10 years. An application for the renewal of a lease, permit, or concession permit shall be treated in the same manner as an original application under this part. Should there be an application or applications other than the renewal application for a permit covering the same area, the renewal application may, if the applicant has met all the requirements of the expiring permit and has been a satisfactory permittee, be given preferential consideration for the renewal of the permit should the applicant meet the highest and most satisfactory offer contained in the several applications.

§ 203.19 Improvements.

Title to improvements constructed on the premises by the permittee shall be fixed and determined by the terms of the permit.

§ 203.20 Revocation of permits.

Any permit issued pursuant to this part may be revoked at any time within the discretion of the Secretary. Agricultural and grazing leases dealt with in § 203.17 shall be subject to cancellation as provided for in the respective Parts 131 and 151 of this chapter, and the conditions of the instruments executed pursuant thereto.

§ 203.21 Notice to vacate.

A permittee shall within 10 days after notification in writing of the cancellation of his permit by the Secretary, vacate the premises covered by the said permit. Any person occupying lands dealt with in the act of April 4, 1938 (52 Stat. 193) without an approved permit or lease shall be notified in writing by the project engineer of the requirements of this part and that for the failure of such person to comply with these requirements and receive a permit or lease within 60 days after receipt of the written notice shall constitute a willful violation of this part, and the project engineer shall submit promptly to the Commissioner of Indian Affairs a detailed report concerning the case, together with recommendations looking to the taking of appropriate legal action to remove such person from the area and to the collection of such funds to compensate for any use made of the property or damages suffered thereto.

§ 203.22 Disposition of revenue.

Funds derived from concessions or leases under this part except those so derived from Indian tribal property withdrawn for irrigation purposes and for which the tribe has not been compensated, shall be available for expenditure under existing law in the operation and maintenance of the irrigation project on which collected and as provided for in Part 130 of this chapter. Funds so derived from Indian tribal property withdrawn for irrigation purposes and for which the tribe has not been compensated, shall be deposited to the credit of the proper tribe.

§ 203.23 Organized tribes.

Concessions and leases on tribal lands withdrawn or reserved for the purposes specified in the act of April 4, 1938 (52 Stat. 193) and dealt with in this part, of any Indian tribe organized under section 16 of the act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 476) for which the tribe has not been compensated shall be made by the organized tribe pursuant to its constitution or charter: *Provided*, No lease or concession so made shall be inconsistent with the primary purpose for which the lands were reserved or withdrawn.

SUBCHAPTER S—CONSTRUCTION

PART 211—PARTIAL PAYMENT CONSTRUCTION CHARGES ON INDIAN IRRIGATION PROJECTS

Sec.

211.1 Partial reimbursement of irrigation charges; 5 percent per annum of cost of system, June 30, 1920.
211.2 Landowners financially unable to pay.
211.3 Period for payments extended.
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211.7 Modification.

AUTHORITY: Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U.S.C. 385. Interpret or apply sec. 1, 41 Stat. 409; 25 U.S.C. 386.

SOURCE: 22 FR 10643, Dec. 24, 1957, unless otherwise noted.

§ 211.1 Partial reimbursement of irrigation charges; 5 percent per annum of cost of system, June 30, 1920.

In pursuance of the act of February 14, 1920 (41 Stat. 409; 25 U.S.C. 386), regulations governing partial payment of construction charges on Indian irrigation projects, with the exception of certain ones mentioned therein, where approved by the Department June 21, 1920, and require that each owner of irrigable land under any irrigation system constructed for the benefit of Indians under provisions of law requiring reimbursement of the cost of such system and to which land, water for irrigation purposes can be delivered from such system, shall pay, on or before November 15, 1920, a sum equal to 5 percent of the per acre cost, as of June 30, 1920, of the construction of the system under which such land is situated. The per acre cost of a given system as of June 30, 1920, shall be determined by dividing the total amount expended for construction purposes on such system up to that day by the total area of land to which water for irrigation purposes can be delivered on that date; and on November 15 of each year following the year 1920, until further notice, the land owners, as therein prescribed, shall pay 5 percent of the per acre construction cost as of June 30, of the current year, such per acre cost to be determined by dividing the cost of the system to June 30 of that year by the total area of land to which water for irrigation purposes can be delivered from the system on that date. Provision is contained that no payments shall be required under the regulations in behalf of lands still in process of allotment or prior to the issuance of the first or trust patent therefor, nor for lands reserved for school, agency, or other administrative purposes where the legal title still remains in the United States.

§ 211.2 Landowners financially unable to pay.

Considerable difficulty has been encountered in collecting charges under the regulations in this part owing to the fact that Indians have been financially unable to pay the charges, the result being that the construction charges have accrued against the lands and in cases where the land is sold for the benefit of the allottee or his heirs under the regulations, the purchaser is to pay the accrued and future irrigation charges which make it difficult in some instances, to sell the land at as favorable terms as might otherwise be secured.

§ 211.3 Period for payments extended.

Furthermore, in recent legislation dealing with specific projects in the Bureau and also all reclamation projects the policy has been to extend the payment of such charges over a longer period of years.

§ 211.4 Annual payment reduced.

In view of these conditions the regulations governing this matter are hereby modified so as to distribute the unaccrued installments over a period of time so that 2½ percent of the total amount yet due shall be due and payable on November 15 of each year until further notice. You shall accordingly ascertain the per acre cost after deducting the amount of the accrued charges and take 2½ percent of that amount and a like sum each year so that the amount of the annual install-

ments will be the same each year. Superintendents are obligated to submit all proposed lists of sales involving allotments containing irrigable allotments to the project or supervising engineer for checking, as to the irrigable acreage and amounts of unpaid construction, operation, and maintenance charges against such allotments. Each sale forwarded to the Bureau for action shall be accompanied by contract executed on Form 5-462b where irrigable acreage is involved and after approval thereof a copy of contract on said form shall be sent to the project engineer for his records and the charges paid by the purchaser shall be turned over to the disbursing agent for credit and deposit as instructed in the next paragraph. The regulations in this part shall not apply to lands in the Wapato project, on the Yakima Indian Reservation, nor to the irrigation projects on the Blackfeet, Fort Peck, Flathead, and Crow Reservations, Montana, for which special regulations have been issued nor to the Fort Hall Reservation, Idaho, or the San Carlos project, Arizona.[1]

CROSS REFERENCES: For special regulations applying to San Carlos project, see Part 215 of this chapter. For further information concerning Form 5-462b, see Part 128 of this chapter.

§ 211.4a Assessment and collection of additional construction costs.

(a) Upon the completion of the construction of an Indian irrigation project, or unit thereof, subsequent to the determination of the partial per acre construction assessment rate which was fixed prior to July 1, 1957 pursuant to § 211.4 the Secretary of the Interior or his authorized representative shall determine such additional construction cost and distribute that cost on a per acre basis against all of the irrigable lands of the project, or unit thereof, and ¼₀th of such per acre additional construction cost thus determined shall be assessed and collected annually from the non-Indian landowner of the project, or unit, thereof. The first installment shall be due and payable on November 15 of the year following the completion of such additional construction work or, if such additional construction work on the project, or unit thereof, has been completed prior to July 1, 1957 and the per acre annual rate determined, the first installment of the additional construction cost to be repaid by such non-Indian landowners shall be due and payable on November 15, 1958. This annual per acre rate shall be in addition to, and run concurrently with, the per acre construction rate assessed annually under § 211.4.

(b) Project lands in Indian ownership are not subject to assessment for their proportionate share of the per acre construction cost of the project, or unit thereof, until after the Indian title to the land has been extinguished. At that time the total annual per acre assessment rate against non-Indian lands of the project, or unit thereof, shall be assessed against the former Indian lands for each and every acre of irrigable land to which water can be delivered through the project works, beginning on November 15 of the year following the extinguishment of the Indian title to the land and on November 15 of each year thereafter over a forty year period. In cases where the Indian title to project land was extinguished prior to July 1, 1957 the assessment rate shall be due and payable on November 15, 1958.

§ 211.5 Payments to disbursing officer.

Payments under this part shall be made to the disbursing officer for the supervising engineer of the Indian Irrigation Service having jurisdiction over the irrigation system under which the land for which payment is made may lie. The sum so collected will then, after proper credit has been made to the land for which collected, be deposited in the Treasury of the United States to the credit of the respective funds used in constructing irrigation systems toward which reimbursement shall have been made.

§ 211.6 "Owner" defined.

The word "owner" as used in this part shall be construed to include any person, Indian or white, or any firm,

[1] The special regulations for Wapato, Fort Peck, and Flathead, were not codified. Operations of the Blackfeet project were discontinued by the Bureau, July 20, 1938, effective September 30, 1933.

partnership, corporation, association, or other organization to whom title to the land capable of irrigation, as provided in the act of February 14, 1920 (41 Stat. 409; 25 U.S.C. 386), has passed, either by fee or trust patent, or otherwise.

§ 211.7 Modifications.

The act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 386a), cancelled all irrigation assessments for construction costs against lands in Indian ownership which were unpaid at that date and deferred all future assessments for construction costs until the Indian title to the land shall have been extinguished.

PART 212—CONSTRUCTION ASSESSMENTS, CROW INDIAN IRRIGATION PROJECT

Subpart A—Charges Assessed Against Irrigation District Lands

Sec.
212.1 Contracts.
212.2 Annual rate of assessments.
212.3 Annual assessments.
212.4 Time of payment.
212.5 Penalty.
212.6 Refusal of water delivery.

Subpart B—Charges Assessed Against Non-Indian Lands Not Included in an Irrigation District

212.20 Private contract lands; assessments.
212.21 Time of payment.
212.22 Penalty.
212.23 Refusal of water delivery.

AUTHORITY: Sec. 15, 60 Stat. 338.

SOURCE: 22 FR 10644, Dec. 24, 1957, unless otherwise noted.

Subpart A—Charges Assessed Against Irrigation District Lands

§ 212.1 Contracts.

Under provisions of the act of Congress approved June 28, 1946 (60 Stat. 333-338), contracts were executed June 28, 1951, by the United States with the Lower Little Horn and Lodge Grass Irrigation District and the Upper Little Horn Irrigation District providing for the payment, over a period of 40 years, by each of the Districts of its respective share of the sum of $210,726 expended for the construction of the Willow Creek storage works on account of non-Indian lands within the Districts entitled to share in the storage water, directly or by substitution.

§ 212.2 Annual rate of assessments.

Within the Lower Little Horn and Lodge Grass Irrigation District there are 3,196.8 acres for which the District is obligated by contract to pay its proper share of the total construction costs. Within the Upper Little Horn Irrigation District there are 1,554.7 acres for which the District is obligated by contract to pay its proper share of the total construction costs. There are 3,237.6 acres, more or less, covered by contracts with private landowners, obligating such owners to pay their proper share of such construction costs. The total per acre charge against all such lands is $26.38. This amounts to an annual per acre rate of $0.6595. For the purpose of this notice the annual per acre rate is hereby fixed at $0.66. This annual per acre rate of assessment will continue for a 40-year period within which the total amount of construction costs of $210,726 is to be repaid without interest. The amount of each annual installment chargeable against each of the Districts for the acreage covered by their respective contracts shall be determined by multiplying the total acreage, under each contract entitled to Willow Creek storage rights, either directly or by subsituation, by the per acre annual rate.

§ 212.3 Annual assessments.

Notice is hereby given of an annual assessment of $2,108.05 to be repaid by the Lower Little Horn and Lodge Grass Irrigation District for the 3,196.8 acres of irrigable land of the District, and an annual assessment of $1,025.06 to be repaid by the Upper Little Horn Irrigation District for the 1,554.7 acres of irrigable land of the District. Against the amounts due annually by the Districts under this notice, there shall be allowed any credits due under section 6 of the act of June 28, 1946. Credits due on behalf of any land shall be reflected by the respective Districts when placing

against such land the annual assessment on the tax rolls.

§ 212.4 Time of payment.

Annual assessments shall be paid by the Districts to the United States, one-half thereof on or before February 1 and one-half thereof on or before July 1 following, of each year commencing with the calendar year 1952.

§ 212.5 Penalty.

To all assessments not paid on the due date, there shall be added a penalty of one-half of one percent per month or fraction thereof, from the due date so long as the delinquency continues.

§ 212.6 Refusal of water delivery.

The right is reserved to the United States to refuse the delivery of water to each of the said Irrigation Districts in the event of default in the payment of assessments, including penalties on account of delinquencies.

Subpart B—Charges Assessed Against Non-Indian Lands Not Included in an Irrigation District

§ 212.20 Private contract lands; assessments.

In addition to 4,751.5 acres of non-Indian land included within the two irrigation Districts dealt with in Subpart A, there are 3,237.6 acres of land, more or less, in non-Indian ownership under private ditches, covered by repayment contracts executed pursuant to the act of June 28, 1946 (60 Stat. 333-338), obligating such owners to pay their proper share of such construction costs. The total per acre charge against all such lands is $26.38. This amounts to an annual per acre rate of $0.6595. For the purposes of this notice the annual per acre rate is hereby fixed at $0.66. This annual rate of assessment will continue for a 40-year period within which the total amount of construction cost of $210,726 is to be repaid without interest. The amount of each annual installment chargeable against the lands covered by each of the several contracts with individual landowners whose lands are served under private ditches, shall be determined by multiplying the total acreage, under each contract entitled to Willow Creek storage rights, either directly or by substitution, by the per acre annual rate. Against the amounts due annually by the individual landowners whose lands are served by private ditches, under this notice there shall be allowed any credits due under section 6 of the act of June 28, 1946. Credits due on behalf of any land shall be reflected in any statement submitted to the landowners.

§ 212.21 Time of payment.

The amount of each annual installment, payable under the private landowner contracts, determined as provided in this part shall be paid by the landowners to the United States, on or before November 15 of each year commencing with the calendar year 1951.

§ 212.22 Penalty.

To all assessments not paid on the due date there shall be added a penalty of one-half of one percent per month or fraction thereof, from the due date so long as the delinquency continues.

§ 212.23 Refusal of water delivery.

The right is reserved to refuse the delivery of water to any landowner in the event of default in the payment of assessments, including penalties on account of delinquencies.

PART 213—FORT HALL INDIAN IRRIGATION PROJECT, IDAHO

Sec.
213.1 Repayment contracts.
213.2 Construction costs.
213.3 Repayment of construction costs.

AUTHORITY: Sec. 9, 46 Stat. 1063.

SOURCE: 22 FR 10645, Dec. 24, 1957, unless otherwise noted.

§ 213.1 Repayment contracts.

A rehabilitation program was established on the Fort Hall Unit of the Fort Hall Project in 1936. Based upon the estimated construction costs, contracts were signed by all non-Indian landowners within the project, including such landowners within the Little

Indian Unit, now a part of the Fort Hall Unit. Under the terms of their contracts, the landowners agreed to repay to the Government their pro rata share, on an acreage basis, of all expenditures for construction and other necessary improvements for carrying out the approved program, payments not to exceed $7.50 per acre, based upon an estimated expenditure of $450,000.00 for a project then considered as covering approximately 60,000 acres.

§ 213.2 Construction costs.

The program of rehabilitation has now been completed at a cost of $419,186.52. This amount, chargeable on an equal per acre basis against 60,000 acres, amounts to a rate of $6.986 per acre, which rate is hereby determined to be the per acre cost to be repaid to the United States under the 1936 contracts.

§ 213.3 Repayment of construction costs.

Under the terms of the contracts, the landowners agreed to repay the construction cost in forty (40) equal annual installments. Therefore, the annual per acre installment is hereby fixed at seventeen and one-half cents (17½ cents) per acre, due and payable on December 1st of each year, the first payment being due on December 1, 1955. Under section 4 of the repayment contracts of the landowners and the act of March 10, 1928 (45 Stat. 210), the charges remain a lien against the lands until paid.

PART 215—REIMBURSEMENT OF CONSTRUCTION COSTS, SAN CARLOS INDIAN IRRIGATION PROJECT, ARIZONA

Sec.
215.1 Water supply.
215.2 Availability of water.
215.3 Construction charges.
215.4 Future charges.
215.5 Construction costs limited.
215.6 Power development.
215.7 Private ownership defined.
215.8 Indian lands excluded.

AUTHORITY: Sec. 5, 43 Stat. 476.

SOURCE: 22 FR 10645, Dec. 24, 1957, unless otherwise noted.

§ 215.1 Water supply.

The engineering report dealt with in section 1 of the act of June 7, 1924 (43 Stat. 475) and other available records show that the storage capacity of the San Carlos reservoir created by the Coolidge Dam and the water supply therefor over a period of years will provide for the irrigation of only 80,000 acres of lands in Indian and public or private ownership within the San Carlos irrigation project, the balance of the water supply needed for the additional 20,000 acres of the project to be provided for by recaptured and return flow water and by means of pumping the underground supply. The cost of providing the proposed supply and of operating the works for this latter acreage to be equally distributed over the entire 100,000 acres of the project regardless of where the works are placed and operated.

§ 215.2 Availability of water.

Pursuant to section 3 of the act of June 7, 1924 (43 Stat. 475), requiring the Secretary of the Interior by public notice to announce when water is actually available for lands in private ownership under the project and the amount of the construction charges per irrigable acre against the same which charges shall be payable in annual installments as provided for therein, this public notice, of which § 215.1 is made a part hereof, is hereby given:

The date when a reasonable water supply is actually available for lands in private ownership under the San Carlos irrigation project is hereby declared to be the 1st day of December 1932.

§ 215.3 Construction charges.

Each acre of land in private ownership of said project is hereby charged with $95.25 of construction cost assessable thereto at the date hereof (Dec. 1, 1932), which sum is based upon 50,000 acres of such privately owned lands, making a total charge or assessment due from the owners thereof of $4,762,250 on this date (Dec. 1, 1932), excluding the cost of operation and maintenance for the calendar year of 1933 which may be carried into construction cost as provided for by sec-

tion 3 of the act of June 7, 1924 (43 Stat. 476), and also excluding interest at the rate of 4 percent which is charged against such lands by said act. Of the 50,000 acres constituting the lands in private ownership within the said project only 46,107.49 acres have at this date (Dec. 1, 1932) actually been designated as coming within the project. Should this present designated area be not increased within a reasonable time herefrom and prior to the due date of the first installment of the charge fixed in this section, namely, on December 1, 1935, so as to bring the total designated area up to the 50,000 acres, the per acre charge fixed in this section shall be proportionately increased against the then designated area so as to assure reimbursement of the total indebtedness due the Government by the owners of the lands in private ownership from the lesser designated acreage.

§ 215.4 Future charges.

The payment of said construction cost and costs of future operation and maintenance of said project as provided for in said section 3 of the act of June 7, 1924 (43 Stat. 476), as supplemented or amended and such contingent project liabilities which may be incurred in accordance with the provisions of said repayment contract shall be made in accordance with the provisions of said act of June 7, 1924, as supplemented or amended and the repayment contract by and between the San Carlos irrigation and drainage district and the Secretary of the Interior bearing date of June 8, 1931; the said construction cost incurred subsequent to this public notice assessable against the lands in private ownership and costs of operation and maintenance assessed against such privately owned lands within the project for the first year after this public notice to be included in the construction cost and such contingent project liabilities which may be incurred in accordance with provisions of the repayment contract shall also be repaid to the Government pursuant to the terms of said act of June 7, 1924, as supplemented or amended, and the repayment contract and this public notice.

§ 215.5 Construction costs limited.

The repayment contract [1] with the San Carlos irrigation and drainage district, page 13 thereof, contains the following:

> In accordance with the foregoing the costs of the San Carlos project as fixed by the public notice to be issued as aforesaid, unless further sums shall be agreed to by the Secretary of the Interior and the district after the execution of this instrument, may amount to but shall not exceed the sum of $9,556,313.77, except that said total may be exceeded by the inclusion of any sums expended to safeguard the project as hereinabove provided for, and any sums expended on account of contingent liabilities as in the next paragraph hereof provided.
>
> The foregoing and subsequent statements of project costs, the district's shares of which are to be repaid hereunder, unless otherwise provided by Congress more favorably to the lands of the project, may be increased by the addition of sums not now fixed as project charges but which possibly constitute contingent project liabilities incurred after the date of the San Carlos Act of June 7, 1924 (43 Stat. 476), or incurred on account of the Florence-casa Grande project, and so may become project charges by the judgment of courts of competent jurisdiction or of other proper authority.
>
> The limitations therein fixed has approximately been reached, there remaining but $32,815.02 yet to be expended on project works before reaching that limitation. Upon the expenditure of this additional sum there shall be no further expenditures of funds for construction, operation and maintenance of the San Carlos project so far as the private lands are concerned until the San Carlos irrigation and drainage district shall, through appropriate action, authorize pursuant to the terms of the said repayment contract such additional expenditures. This limitation does not apply to project expenditures for the extension of the distributing and pumping system regardless of where they may arise. This class of expenditures being excepted from the limitation on expenditures contained in the said repayment contract by section 14, page 10, thereof, which section is known as the "Equalization of Expenditures."

§ 215.6 Power development.

The cost of the power development at the Coolidge Dam is hereby fixed at $735,000. The net revenues derived from the operation of this power development shall be disposed of as re-

[1] Contract available at the Bureau of Indian Affairs, Washington, D.C.

quired by the terms and conditions of the act of March 7, 1928 (45 Stat. 210) as supplemented or amended.

§ 215.7 Private ownership defined.

The term "private ownership" used in this public notice includes all lands of the San Carlos irrigation project that have or may be designated by the Secretary of the Interior that are situated outside of the boundaries of the Gila River Indian Reservation.

§ 215.8 Indian lands excluded.

This public notice, with the exception of that part dealing with payment in advance each year of operation and maintenance charges against lands in Indian ownership operated under lease, does not apply in so far as payments are concerned to Indian lands within the project. The act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 386a) defers the collection of construction costs from Indian owned lands so long as the title to such lands remains in the Indian ownership.

PART 216—REIMBURSEMENT OF CONSTRUCTION COSTS, AHTANUM UNIT, WAPATO INDIAN IRRIGATION PROJECT, WASHINGTON

Sec.

216.1 Construction costs and assessable acreage.
216.2 Repayments of construction costs.
216.3 Payments.
216.4 Deferment of assessments on lands remaining in Indian ownership.
216.5 Assessments after the Indian title has been extinguished.

AUTHORITY: Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U.S.C. 385.

SOURCE: 22 FR 10646, Dec. 24, 1957, unless otherwise noted.

§ 216.1 Construction costs and assessable acreage.

The construction program has been completed on the Ahtanum Unit of the Wapato Indian Irrigation Project and the construction costs have been established as $79,833.64. The area benefited by this development has been established at 4,765.2 acres. Under the requirements of the acts of February 14, 1920 (41 Stat. 409) and March 7, 1928 (45 Stat. 210), these costs are to be repaid to the United States Treasury by the owners of the lands benefited.

§ 216.2 Repayment of construction costs.

The cost per acre under § 150.1 is, therefore, established at $16.7535. Under the provisions of the acts of February 14, 1920 (41 Stat. 409) and March 7, 1928 (45 Stat. 210) is based on forty equal annual payments, the annual per acre assessment is hereby fixed at $0.42 per acre for the year 1957 and each succeeding year until the entire cost for each tract shall have been repaid to the United States Treasury. On those tracts where payments have been made pursuant to Part 211 of this chapter, annual assessments beginning with the year 1957 at the rate of $0.42 per acre will be made until the entire cost of $16.7535 per acre shall have been repaid to the United States Treasury. Landowners may pay at any time the total of the then remaining indebtedness. Under the act of March 10, 1928 (45 Stat. 210) the unpaid charges stand as a lien against the lands until paid.

§ 216.3 Payments.

Payments are due on December 31 of each year and shall be made to the official in charge of collections for the project.

§ 216.4 Deferment of assessments on lands remaining in Indian ownership.

In conformity with the act of July 1, 1932 (47 Stat. 564); 25 U.S.C. 386(a) no assessment shall be made on behalf of construction costs against Indian-owned land within the project until the Indian title thereto has been extinguished.

§ 216.5 Assessments after the Indian title has been extinguished.

Indian-owned lands passing to non-Indian ownership shall be assessed for construction costs and the first assessment shall be due on December 31 of the year that Indian title is extinguished. Assessments against this land will be at the annual rate of $0.42 per acre and shall be due as provided in § 216.3, and payable promptly thereafter until the total construction cost of

$16.7535 per acre chargeable against the land has been paid in full.

PART 218—REIMBURSEMENT OF CONSTRUCTION COSTS WAPATO-SATUS UNIT, WAPATO INDIAN IRRIGATION PROJECT, WASHINGTON

Sec.

218.1 Construction costs and assessable acreage.
218.2 Repayment of construction costs.
218.3 Payments.
218.4 Deferment of assessments on lands remaining in Indian ownership.
218.5 Assessments after the Indian title has been extinguished.

AUTHORITY: Sec. 41 Stat. 409, 45 Stat. 210; 25 U.S.C. 386, 387.

SOURCE: 28 FR 6536, June 26, 1963, unless otherwise noted.

§ 218.1 Construction costs and assessable acreage.

The construction program has been completed on the Wapato-Satus Unit of the Wapato Indian Irrigation Project, and the construction costs have been established by Designation Report dated August 1962 as $7,903,823.12 for the project and $1,499,073.62 for the "B" lands share of the construction costs in the Bureau of Reclamation reservoirs on the Yakima River. The area benefited by this development has been established at 136,559.59 acres divided into 79,025.68 acres of "A" land and 57,533.91 acres of "B" land. Under the requirements of the acts of February 14, 1920 (41 Stat. 409), and March 7, 1928 (45 Stat. 210), these costs are to be repaid to the United States Treasury by the owners of the lands benefited.

§ 218.2 Repayment of construction costs.

The cost per acre of the construction under § 218.1 is, therefore, calculated at $57.8782 for "A" lands and $83.9337 for "B" lands in non-Indian ownership as established by Designation Report dated August 1962. Under the provisions of the acts cited in § 218.1 the annual per acre assessment for forty equal annual payments, is hereby fixed at $1.45 per acre for "A" lands and $2.10 per acre for "B" lands for the year 1962 and each succeeding year, until the entire cost for each tract shall have been repaid to the United States Treasury. On those tracts where payments have been made pursuant to uncodified special regulations, annual assessments beginning with the year 1962 at the rate of $1.45 per acre for "A" lands and $2.10 per acre for "B" lands will be made until the entire cost of $57.8782 per acre for "A" lands and $83.9337 per acre for "B" lands shall have been repaid to the United States Treasury. Landowners may pay at any time the total of the then remaining indebtedness. Under the act of March 10, 1928 (45 Stat. 210), the unpaid charges stand as a lien against the lands until paid.

§ 218.3 Payments.

Payments are due on December 31 of each year and shall be made to the official in charge of collections for the project.

§ 218.4 Deferment of assessments on lands remaining in Indian ownership.

In conformity with the act of July 1, 1932 (47 Stat. 564; U.S.C. 386(a)), no assessment shall be made on behalf of construction costs against Indian-owned land within the project until the Indian title thereto has been extinguished.

§ 218.5 Assessments after the Indian title has been extinguished.

Indian-owned lands passing to non-Indian ownership shall be assessed for construction costs and the first assessment shall be due on December 31 of the year that the Indian title is extinguished. The construction costs against this land will be established as provided by section 5 of the act of September 26, 1961 (75 Stat. 680). The annual per acre assessment rate will be determined by dividing the established construction cost per acre into forty equal payments. "B" lands will also be assessed for reservoir construction costs in the annual per-acre rate as established in the Designation Report dated August 1962. Assessments against this land will continue until the entire established construction costs shall have been repaid to

the United States Treasury. Landowners may pay at any time the total of the then remaining indebtedness. Under the act of March 10, 1928 (45 Stat. 210), the unpaid charges stand as a lien against the lands until paid.

SUBCHAPTER T—OPERATION AND MAINTENANCE

PART 221—OPERATION AND MAINTENANCE CHARGES

COLVILLE INDIAN IRRIGATION PROJECT, WASHINGTON

Sec.
221.1—221.8 [Reserved]
221.9 Charges.
221.10 Payments.
221.11 Delivery contingent on payment.
221.11a Water users responsible for water after delivery.

CROW INDIAN IRRIGATION PROJECT, MONTANA

221.12 Charges.
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221.13a Charges, Big Horn Irrigation District.
221.13b Charges, Lower Little Horn and Lodge Grass Irrigation District.
221.13c Charges, Upper Little Horn Irrigation District.
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221.13e General regulations.

FORT BELKNAP INDIAN IRRIGATION PROJECT, MONTANA

221.15—221.29 [Reserved]
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221.31a Water users responsible for water after delivery.

FORT PECK INDIAN IRRIGATION PROJECT, MONTANA

221.38 Charges.
221.39 Payment.
221.40 Care of waste water.

NAVAJO INDIAN IRRIGATION PROJECT, ARIZONA AND NEW MEXICO

221.41 Charges.
221.42 Payment.
221.43 Water users responsible for water after delivery.

PINE RIVER INDIAN IRRIGATION PROJECT, COLORADO

221.55 Charges.
221.56 Time of payment.
221.57 Conditions of payment.

SAN CARLOS INDIAN IRRIGATION PROJECT, ARIZONA

221.63 [Reserved]
221.64 Assessment, State and Federal agencies.
221.65 Assessment, villages, towns and schools.
221.66 Modification.
221.67 Operation by district.
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DEFINING JOINT DISTRICT AND INDIAN WORKS OF THE SAN CARLOS FEDERAL IRRIGATION PROJECT

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221.69g Application of funds from excess water deliveries and sales.
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221.69m Supervisory control retained.

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221.70 Charges.
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WALKER RIVER INDIAN IRRIGATION PROJECT, NEVADA

221.73—221.82 [Reserved]
221.83 Charges.
221.84 Payment.
221.85 Water users responsible for water after delivery.

WIND RIVER IRRIGATION PROJECT, WYOMING

221.86—221.96 [Reserved]

ZUNI PUEBLO INDIAN IRRIGATION PROJECT, NEW MEXICO

221.98 Charges.
221.99 Time of payment.
221.100 Conditions of payment.

MISCELLANEOUS INDIAN IRRIGATION PROJECTS

221.105 Charges.
221.106 Payments.
221.107 Water users responsible for water after delivery.

TRIBAL AND TRUST PATENT INDIAN LANDS OF SAN CARLOS PROJECT, ARIZONA

Sec.
221.110 Basic charge.
221.111 Excess water charge.
221.112 Time and place of payment.
221.114 Application for water service.
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SALT RIVER INDIAN IRRIGATION PROJECT, ARIZONA

221.120 Basic assessment.
221.121 Payment.
221.122 Delivery of water.
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BLACKFEET INDIAN IRRIGATION PROJECT, MONTANA

221.130 Basic assessment.
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221.170 Charges.
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221.172 Delivery.
221.173 Water users responsibility.
221.174 Distribution and apportionment.

CHUICHU INDIAN IRRIGATION PROJECT, ARIZONA

221.190 Charges.
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221.192 Water delivery.
221.193 Water users' responsibility for water after delivery.
221.194 Water service.
221.195 Distribution and apportionment.

AUTHORITY: Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U.S.C. 385, unless otherwise noted.

COLVILLE INDIAN IRRIGATION PROJECT, WASHINGTON

§§ 221.1–221.8 [Reserved]

§ 221.9 Charges.

The annual operation and maintenance charges are hereby fixed for the lands under the various units in the amounts named in this section, on the Colville Indian Irrigation Project, Wash.

(a) The per acre per annum rates for the following units are: Nespelem Unit $5; Little Nespelem Unit $5. All patent in fee lands and all Indian trust lands to which water can be delivered for irrigation and on which application for water services is made by the water users and approved by the Superintendent of the Indian Reservation, are subject to the above rates.

[34 FR 2201, Feb. 14, 1969]

§ 221.10 Payments.

(a) The annual charges fixed in § 221.9 for the Nespelem and Little Nespelem Units shall become due on April 1 of each year and are payable on or before that date.

(b) [Reserved]

(c) To any charges against non-Indian land or Indian land under lease to non-Indians remaining unpaid after July 1, there shall be added a penalty of one-half of 1 percent per month or fraction thereof from the due date until paid.

(d) In any instance where the Superintendent is convinced that an Indian landowner, whose land is not under lease to a non-Indian, is financially unable to pay his operation and maintenance charges from proceeds of the crops being grown on the lands, or from any other source, water may be delivered if a written certificate is issued by the Superintendent stating that such Indian is not financially able to pay such charges. In such cases, the unpaid charges shall be entered on the accounts and will stand as a first lien against the land until paid but without penalty for delinquency.

[34 FR 2201, Feb. 14, 1969]

§ 221.11 Delivery contingent on payment.

(a) No water shall be delivered to any tract of land under the Nespelem and Little Nespelem Units until the entire irrigation charges for the current year shall have been paid.

(b) No water shall be delivered to lands in non-Indian ownership until all delinquent charges, plus penalties, for previous years have been paid.

(c) No water shall be delivered to Indian lands under lease until the

lessee has paid all charges, plus penalties in the case of a non-Indian lessee, which have accrued during the period of his lease.

(d) A water user who has fulfilled all requirements and is eligible to have water delivered to him shall give the ditch rider 48 hours notice in advance of the time he wishes to receive water or discontinue delivery of water to his tract.

[34 FR 2201, Feb. 14, 1969]

§ 221.11a Water users responsible for water after delivery.

It is the duty of the Indian Irrigation Service to furnish available water for beneficial irrigation use only. It is the duty of all water users of the project to aid in the prevention of the waste of water and of damage to adjacent lands. The water users are responsible for the water after it has been delivered to their lands, and are required to have their field ditches of proper capacity and in suitable condition for the use of economical heads of water.

[34 FR 2202, Feb. 14, 1969]

Crow Indian Irrigation Project, Montana

§ 221.12 Charges.

In compliance with the provisions of the Act of August 1, 1914 (38 Stat. 583; 25 U.S.C. 385), the operation and maintenance charges, for irrigable lands under the Crow Indian Irrigation Project and under certain private ditches for the calendar year 1976 and subsequent years until further notice, are hereby fixed as follows:

Per acre

For the assessable nondistrict area under constructed works on all Government-operated units expecting Coburn Ditch

$4.60 per acre

For the assessable area under constructed works on certain tracts of irrigable trust patent Indian land within and benefited by the Two Leggins Unit

$4.18 per acre

For the assessable area on certain tracts of irrigable trust patent Indian land within and benefited by the Bozeman Trail Unit

$2.18 per acre

For all lands in Indian ownership under the Bozeman Trail Unit on June 28, 1946, and under constructed works on all Government-operated units in the Little Big Horn watershed; for non-Indian, non-irrigation district lands, under private ditches, contracting for the benefits and repayment for the costs of the Willow Creek Storage Work; for operation of said works

.20 per acre

For certain tracts of irrigable trust patent Indian lands within and benefited by the Two Leggins Drainage District (contract dated June 29, 1932)

.85 per acre

[41 FR 18411, May 4, 1976]

§ 221.13 Payment.

The charges as fixed in § 221.12 shall become due on April 1 of each year, and are payable on or before that date. To all charges assessed against lands in non-Indian ownership and Indian lands under lease to non-Indian lessees which are not paid on or before July 1 of each year, there shall be added a penalty of one-half of 1 percent per month or fraction thereof from the due date, April 1, so long as the delinquency continues. No water shall be delivered until such charges have been paid; except that Indian water users who are financially unable to pay the assessment on the due date may be furnished water, provided the Superintendent of the reservation certifies to the Project Engineer that such Indian is not financially able to pay the assessment, or has made satisfactory arrangement to pay the assessments from proceeds of crops or from other sources. Penalty interest charges shall not be assessed against lands owned by an Indian water user, nor against Indian lands under lease to an Indian lessee.

[23 FR 614, Jan. 30, 1958]

§ 221.13a Charges, Big Horn Irrigation District.

Pursuant to a contract executed by the Big Horn Irrigation District, Crow Indian Irrigation Project, Montana, and approved by the Secretary of the Interior on June 28, 1948, notice is hereby given that an assessment of $4.60 per acre is hereby fixed for the season of 1975 and subsequent years until further notice, for the operation

and maintenance of the irrigation systems which serve that portion of the project wit'.in the confines and under the jurisdiction of the Big Horn Irrigation District. This assessment is applicable to an area of approximately 8,000 acres; does not include any lands held in trust for Indians and covers all proper general charges and project overhead.

[40 FR 4653, Jan. 31, 1975]

§ 221.13b Charges, Lower Little Horn and Lodge Grass Irrigation District.

(a) Pursuant to a contract executed by the Lower Little Horn and Lodge Grass Irrigation District, Crow Indian Irrigation Project, Montana, and approved by the Secretary of the Interior on June 28, 1948, notice is hereby given that an assessment of $4.60 per acre is hereby fixed for the season of 1975 and subsequent years until further notice, for the operation and maintenance of the irrigation systems which serve the portion of the project within the confines and under the jurisdiction of the Lower Little Horn and Lodge Grass Irrigation District. This assessment is applicable to an area of approximately 2,500 acres; does not include any lands held in trust for Indians and covers all proper general charges and project overhead.

(b) Pursuant to a second contract executed by the above district and approved by the Assistant Secretary of the Interior on June 28, 1961, a notice is hereby given that an assessment of twenty cents ($.20) per acre is hereby fixed for that season of 1975 and subsequent years until further notice for the operation and maintenance of the Willow Creek storage water either directly or by substitution to that portion of the project within the confines and under the jurisdiction of the Lower Little Horn and Lodge Grass Irrigation Districts.

[40 FR 4653, Jan. 31, 1975]

§ 221.13c Charges, Upper Little Horn Irrigation District.

(a) Pursuant to a contract executed by the Upper Little Horn Irrigation District, Crow Indian Irrigation Project, Montana, and approved by the Secretary of the Interior on June 28, 1948, notice is hereby given that an assessment of $4.60 per acre is hereby fixed for the season of 1975 and subsequent years until further notice for the operation and maintenance of the irrigation systems which serve storage water either directly or by substitution to that portion of the project within the confines and under the jurisdiction of the Upper Little Horn Irrigation District. This assessment includes an area of approximately 1,500 acres; does not include any lands held in trust for Indians and covers all proper general charges and project overhead.

(b) Pursuant to a second contract executed by the above district and approved by the Assistant Secretary of the Interior on June 28, 1951, notice is hereby given that an assessment of twenty cents ($.20) per acre is hereby fixed for the season of 1975 and subsequent years until further notice, for the operation and maintenance of the Willow Creek storage works which serve storage water either directly or by substitutions to that portion of the project within the confines and under the jurisdiction of the Upper Little Horn Irrigation District.

[40 FR 4653, Jan. 31, 1975]

§ 221.13d Time of payment.

The amount of assessments fixed in §§ 221.13a, 221.13b and 221.13c shall be paid by the respective irrigation districts to the United States, one-half thereof on or before February 1, in advance of the delivery of water for that season, and the remainder on or before July 1 following, of each year. To all assessments not paid on July 1 of each year, there shall be added a penalty of one-half of one percent per month, or fraction thereof, from the due date so long as the delinquencies continue; and the right is reserved to refuse delivery of water to a district or individual landowner in the event of default by the district or landowner in the payment of assessments, including penalties on account of delinquencies.

[22 FR 10650, Dec. 24, 1957]

§ 221.13e General regulations.

The irrigation districts shall comply fully with the general rules and regu-

lations now in existence and as hereafter amended, applicable to the areas included in the districts, contained in Part 193 of this chapter.

[22 FR 10650, Dec. 24, 1957]

FORT BELKNAP INDIAN IRRIGATION PROJECT, MONTANA

§§ 221.15–221.29 [Reserved]

§ 221.30 Charges.

Pursuant to the provisions of the Acts of August 1, 1914, and March 7, 1928 (39 Stat. 583, 45 Stat. 210; 25 U.S.C. 385, 387), the basic annual charges for operation and maintenance against the irrigable lands to which water can be delivered under the constructed works of the Fort Belknap Indian Irrigation Project in Montana are hereby fixed for calendar year 1969 and each succeeding year until further order (a) for the Milk River and White Bear Units, including lands under pumping contract with the Fort Belknap Indian Irrigation Project, at $2.65 per acre against lands in Indian ownership not under lease to a non-Indian, and at $5.17 per acre against lands in non-Indian ownership and lands in Indian ownership under lease to a non-Indian; (b) for the Three Mile Unit at $3.20 per acre against lands in Indian ownership not under lease to a non-Indian, and at $5.72 per acre against lands in non-Indian ownership and lands in Indian ownership under lease to a non-Indian; and (c) for the Brown Unit at $2 per acre for Indian and non-Indian owned lands; and (d) for the Peoples Creek (Hays) and Ereaux Units at $2 per acre for Indian and non-Indian owned lands.

[34 FR 5548, Mar. 22, 1969]

§ 221.31 Payment.

(a) The annual charges fixed in § 221.30 shall become due on April 1 of each year, are payable on or before that date, and any assessment remaining unpaid after the due date shall stand as a first lien against the land. Any delinquent charges against land in non-Indian ownership and Indian lands under lease to non-Indians shall be subject to a penalty of one-half of 1 percent per month or fraction thereof from the due date until paid.

(b) The delivery of water shall be refused to all tracts of land for which the charges have not been paid when due, except where the lands are in Indian ownership, not under lease to non-Indians, and the Indian owners shall have made the necessary arrangements with the superintendent as hereafter provided. When any Indian owner of land not under lease to a non-Indian is financially unable to pay the operation and maintenance charges on the due date from cash on hand, the superintendent may make the necessary arrangements with such Indian owner as will permit him to perform labor on the irrigation project works, the proceeds derived therefrom to be applied in partial payment of such charges. The superintendent may also make necessary arrangements for such Indian owner to pay the operation and maintenance charges from the proceeds of the crops grown on the land when harvested and marketed within that calendar year, provided written statements to that effect are furnished the superintendent by the Indian owner on or before the due date.

(c) In any instance where the superintendent is convinced that an Indian landowner, whose land is not under lease to a non-Indian, is financially unable to pay his operation and maintenance charges from proceeds of labor performed on the project works, or from the proceeds of the crops being grown on the land, or from any other source, the delivery of water may be continued if a written certificate is issued by the superintendent stating that such Indian is not financially able to pay such charges and copies thereof forwarded to the Commissioner of Indian Affairs for approval or rejection. In such cases the unpaid charges shall be entered on the accounts and will stand as a first lien against the land until paid but without penalty for delinquency.

[22 FR 10651, Dec. 24, 1957]

§ 221.31a Water users responsible for water after delivery.

It is the duty of the Indian Irrigation Service to furnish available water

for beneficial irrigation use only. It is the duty of all water users of the project to aid in the prevention of the waste of water and of damage to adjacent lands. The water users are responsible for the water after it has been delivered to their lands, and are required to have their field ditches of proper capacity and in suitable condition for the use of economical heads of water.

[22 FR 10651, Dec. 24, 1957]

FORT PECK INDIAN IRRIGATION PROJECT, MONTANA

§ 221.38 Charges.

(a) On that part of the Big Porcupine Unit that is under the service area of the Big Porcupine or Wiota pumping plant, water, when available, will be furnished to all irrigable non-Indian lands and to all Indian lands leased to non-Indians, to which delivery of water can be made, during the 1971 irrigation season and thereafter until further notice, at a minimum rate of $4.50 per acre per annum whether water is used or not. Payment of the minimum rate entitles the water user to the delivery of 2 acre-feet of water per acre of irrigable land included in each farm unit or allotment. Any additional water delivered shall be charged for at the rate of $2.25 per acre-foot or fraction thereof for the first additional acre-foot, $2.25 per acre-foot or fraction thereof for the second additional acre-foot and $2.25 per acre-foot or fraction thereof for water delivered in excess of the second additional acre-foot.

(b)(1) For Indian land farmed by the Indian owner or leased and farmed by Indians, under that part of the Big Porcupine Unit that is within the service area of the Wiota pumping plant, water, when available, will be furnished during the 1971 season and until further notice at a minimum rate of $4.50 per acre per annum for the entire irrigable area included in the allotment whether water is used or not. Payment of the minimum rate entitles the Indian water user to the delivery of 2 acre-feet of water per acre included in the allotment. Any additional water delivered shall be charged for at the rate of $2.25 per acre-foot or fraction thereof for the first additional acre-foot, and $2.25 per acre-foot or fraction thereof for the second additional acre-foot, and $2.25 per acre-foot or fraction thereof for water delivered in excess of the second additional acre-foot.

(2) For all irrigable lands situated adjacent to and outside of that part of the Big Porcupine Unit that is under the service area of the Big Porcupine Unit or Wiota pumping plant, surplus water, when available and not required for irrigation of lands within the Big Porcupine Unit, will be furnished at the flat rate of $3 per acre-foot. Water measurement and delivery thereof will be made at the project limits.

(c) On the Frazer-Wolf Point Unit (comprising all irrigable lands supplied with water from the Little Porcupine Reservoir and the Frazer pumping plant) water, when available, will be furnished to all irrigable non-Indian lands and to all irrigable Indian-owned allotments leased to non-Indians (whether subjugated or not) to which delivery of water can be made during the 1971 irrigation season and until further notice at a minimum rate of $4.50 per acre per annum whether water is used or not. Water, when available, will be furnished at a like minimum rate for the irrigable area for all subjugated Indian-owned allotments to which delivery of water can be made. Payment of the minumum rate entitles the water user to the delivery of 2 acre-feet of water per acre of irrigable land included in each farm unit or allotment. Any additional water delivered shall be charged for at the rate of $2.25 per acre-foot or fraction thereof for the first additional acre-foot, $2.35 per acre-foot or fraction thereof for the second additional acre-foot and $2.25 per acre-foot or fraction thereof for water delivered in excess of the second additional acre-foot.

(d) For all Indian lands farmed by the Indian owner, or leased and farmed by Indians in the Frazer-Wolf Point Unit, not subjugated but to which water can be delivered, water, when available will be furnished during the 1971 irrigation season and

thereafter until further notice at a minimum rate of $4.50 per acre per annum for the entire irrigable area included in each allotment whether water is used or not. Payment of the minimum rate entitles the Indian water user to the delivery of 2 acre-feet of water per irrigable acre included in the allotment. Any additional water delivered shall be charged for at the rate of $2.25 per acre-foot or fraction thereof for the first additional acre-foot, $2.25 per acre-foot or fraction thereof for the second additional acre-foot and $2.25 per acre-foot or fraction thereof for water delivered in excess of the second additional acre-foot.

[36 FR 6748, Apr. 8, 1971]

§ 221.39 Payment.

(a) The flat rate and the minimum charges fixed in § 221.38 shall become due and payable on April 1 of each calendar year. The charges for excess water delivered during any irrigation season shall be included in the bill for the ensuing season and shall be due and payable on April 1 following the season in which the excess water is delivered, except in the case of excess water deliveries to lessees of Indian lands where payment is required in advance of the delivery of water.

(b) No water shall be delivered to any lands until all charges shall have been paid except in the case of Indian trust lands farmed by Indians to which water may be delivered upon certification by the superintendent of the reservation that satisfactory written arrangements have been made providing for the payment of such charges from the proceeds of the crops or from proceeds received in payment for labor performed by the water user on the project works. Copies of such certificates shall be forwarded to the Commissioner of Indian Affairs and shall be subject to rejection or modification upon review. Any unpaid assessments, in instances where the superintendent has certified the Indian owner is financially unable to pay the charges, shall be entered on the accounts as a lien against the land but without penalty for delinquency.

(c) To all charges assessed against lands in non-Indian ownership and Indian lands under lease to non-Indian lessees which are not paid on or before July 1 of each year there shall be added a penalty of one-half of 1 percent per month or fraction thereof from the due date, April 1, so long as the delinquency continues.

[22 FR 10652, Dec. 24, 1957]

§ 221.40 Care of waste water.

All applicants for water will be required to construct and maintain in good order and repair upon their lands such ditches as may be necessary to catch and conduct to some waste canal, ditch, lateral, or natural drainage channel, any waste water flowing upon or from said lands. No waste water will be allowed to collect within 20 feet of any canal or lateral belonging to the United States, nor shall any waste water ditches be constructed or maintained within 10 feet of any canal or lateral of the United States, except at points of intersection or crossing, which shall be located only by order and under the direction of the proper officers of the United States. No water will be furnished to any applicant during such time as he fails to comply with the provisions of this section.

[22 FR 10652, Dec. 24, 1957]

NAVAJO INDIAN IRRIGATION PROJECT, ARIZONA AND NEW MEXICO

SOURCE: §§ 221.41 to 221.43 appear at 22 FR 10653, Dec. 24, 1957.

§ 221.41 Charges.

Pursuant to the provisions of the acts of August 1, 1914 (38 Stat. 583; 25 U.S.C. 385) and March 7, 1928 (45 Stat. 210), the annual basic charges for operation and maintenance assessed against the irrigable lands of the Navajo Indian Irrigation Project, Arizona and New Mexico, to which water can be delivered through the constructed works of the project, are hereby fixed at $2.00 per acre per annum for the year 1956 and thereafter until further notice, for the following units:

Navajo project	Agency	Per acre per annum
Fruitland Unit	Navajo	$2.00
Ganado Unit	do	2.00
Hogback Unit	do	2.00
Many Farms Unit	do	2.00
Red Lake Unit	do	2.00

For domestic water delivered through the project canal system and lateral system to permittees on the reservation lands, $7.50 for each cistern.

For Tribal lands operated by the Shiprock High School, $2.00 per acre.

For Tribal lands operated as a Nursery by the Branch of Land Operations, Soil and Moisture Conservation Activity, $2.00 per acre.

§ 221.42 Payment.

(a) The annual charges fixed in § 221.41 shall become due on April 1 of each year; are payable on or before that date, and any charges that remain unpaid after the due date shall stand as a first lien against the land until paid.

(b) The delivery of water shall be refused to all tracts of land for which the charges have not been paid when due, except in instances where the lands are in Indian assignment, and the Indian assignee shall have made the necessary arrangements with the superintendent as provided in this section. When any Indian assignee of land is financially unable to pay the operation and maintenance charges on the due date from cash on hand, arrangements may be made by prior agreement with the superintendent whereby the Indian will perform labor on the project works and pay from the proceeds received from such work at least an amount equal to $1.00 per acre per annum; or the superintendent may make the necessary arrangements for such Indian assignee to pay the operation and maintenance charges from the proceeds of the crops grown on the land when harvested and marketed within that calendar year, provided written statements to that effect are furnished by the Indian assignee on or before the due date.

(c) In any instance where the superintendent is convinced that an Indian assignee is financially unable to pay his operation and maintenance charges from proceeds of labor performed on his project works, or from the proceeds of the crops being grown on the land, or from any other source, the delivery of water may be continued if a written certificate is issued by the superintendent stating that such Indian is not able to pay his charges and copies thereof forwarded to the district office director for approval or rejection. In such cases the unpaid charges shall be entered on the accounts and will stand as a first lien against the land until paid but without penalty for delinquency.

§ 221.43 Water users responsible for water after delivery.

It is the duty of the Indian irrigation service to furnish available water for beneficial irrigation use only. It is the duty of all water users of the project to aid in the prevention of the waste of water and of damage to adjacent lands. The water users are responsible for the water after it has been delivered to their lands, and are required to have their field ditches of proper capacity and in suitable condition for the use of economical heads of water.

Pine River Indian Irrigation Project, Colorado

§ 221.55 Charges.

Pursuant to the provisions of the Act of August 1, 1914 (38 Stat. 543; U.S.C. Sec. 385) and March 7, 1928 (45 Stat. 200, 210), the basic annual charges for operation and maintenance against the irrigable lands of the Pine River Indian Irrigation Project, Colorado, for the year 1975 and thereafter until further notice are hereby fixed as follows:

Annual per acre assessment:

(1) Project operations and maintenance—$3.50

(2) Vallecito Reservoir operation and maintenance—0.16

(3) Minimum charges for any tract—4.00

A minimum billing will be assessed against any tract of land where the total charges are less than $4.00.

[39 FR 41527, Nov. 29, 1974]

§ 221.56 Time of payment.

The charges as fixed in § 221.55 shall become due April 1, and are payable on or before that date. To all charges assessed against owners of patent in fee of white owned lands not paid on July 1, following, there shall be added a penalty of one-half of 1 percent per month, or fraction thereof, so long as the delinquency continues. No water shall be delivered to lands of competent Indians or white owned lands until such charges shall have been paid, or to lands of incompetent Indians until the superintendent of the reservation shall have issued a certificate to the project engineer that the Indian farming such lands is financially unable to pay the charge, or in case such Indian lands are leased, the terms of the lease relative to the payment of water charges shall have been complied with.

[22 FR 10654, Dec. 24, 1957]

§ 221.57 Conditions of payment.

These charges shall not apply to any lands furnished irrigation water under contract between the Department of the Interior and any company or corporation or individual person, which contract contains provisions for payment for furnishing or carrying water, differing from the conditions herein provided. In all such cases sums will be collected in accordance with the terms of the respective contracts.

[22 FR 10654, Dec. 24, 1957]

San Carlos Indian Irrigation Project, Arizona

Source: §§ 221.63 to 221.69 appear at 22 FR 10654, Dec. 24, 1957, unless otherwise noted.

§ 221.63 [Reserved]

§ 221.64 Assessment, State and Federal agencies.

Pursuant to the provisions of the act of March 7, 1928 (45 Stat. 210), and Article 12 of the repayment contract of June 8, 1931 and in accordance with §§ 221.69a-221.69m, the State lands and Federal agencies may be delivered water, out of such project water as may be set aside for that purpose, for the calendar year 1946, and until further order, upon the payment of $2.50 per acre per annum, payable in advance each year of the delivery of water. Such payment shall entitle the lands to receive 2 acre-feet of water per acre per annum or such lesser amount as represents the proportionate share of the available supply of water. Any water delivered to such lands in excess of 2 acre-feet per acre shall be paid for on the same terms under which excess water is furnished to project lands.

The water service to the State lands and Federal agencies shall be made by:

(a) The San Carlos irrigation and drainage district shall serve the State lands for which service the district shall collect and retain $2.50 per acre.

(b) The Indian unit of the project, as defined in §§ 221.69a-221.69m, shall serve the Federal agencies for which it shall collect and retain $2.50 per acre. The collections for the sale of excess water as defined in §§ 221.69a-221.69m, to the State lands and Federal agencies shall be made by the district and Indian unit respectively in advance of the delivery of water, and shall be paid on or before December 31 of each year as provided in §§ 221.69a-221.69m.

§ 221.65 Assessment, villages, towns, and schools.

(a) Such project water as shall be available may be delivered to the villages, towns, and schools, not included in the designated area of the San Carlos Irrigation Project, for the irrigation of lawns and gardens. Beginning on October 1, 1977, and until further order, the charge for such service shall be $26.00 per acre-foot of water delivered, payable in advance of delivery.

(b) The delivery of water and the collection therefor shall be made by the San Carlos Irrigation and Drainage District. It is agreed that, for the balance of the season of 1977, commencing on October 1, 1977, the District shall retain $14.00 per acre-foot on which collection shall be made, as its compensation for rendering the service. The remainder of the collections shall be paid to the Project Engineer for the San Carlos Irrigation

Project for the benefit of the joint works.

[42 FR 15909, Mar. 24, 1977]

§ 221.66 Modification.

Sections 221.63–221.65 are subject to modification for future years by the issuance and publication of changes thereto.

(Acts of June 7, 1924, 43 Stat. 476, U.S.C. 385; Mar. 7, 1928, 45 Stat. 210, 25 U.S.C. 387)

[37 FR 13174, July 4, 1972]

§ 221.67 Operation by district.

The San Carlos irrigation and drainage district upon request of its board of directors may continue for the period of this order to operate the canals serving lands in private and public ownership within its boundary, and in the event said district elects to continue such operation a credit of 70 cents per acre shall be allowed from the said basic charge for the area of district lands so operated and the basic charge to be paid to the Government by the district will accordingly be reduced to 95 cents per acre.

§ 221.68 Restriction of Government obligations.

It should be understood that the provisions of §§ 221.62–221.69 requiring funds to be made available by the United States are dependent upon appropriations being made by Congress therefor; that the charges based upon the conditions defined shall apply to the calendar year 1938 only, and that nothing herein shall be construed as establishing a precedent for future years.

§ 221.69 District obligations.

Should the San Carlos irrigation and drainage district, through its board of directors, request and be granted the privilege of maintaining certain of the works of the project designated in the said repayment contract as "Works of the District," the rights and obligations of the district shall be prescribed and governed by the departmental order turning over the maintenance of such works to the district.

Defining Joint District and Indian Works of the San Carlos Federal Irrigation Project

Source: §§ 221.69a to 221.69m appear at 22 FR 10655, Dec. 24, 1957.

§ 221.69a Joint works.

The joint works of the San Carlos Federal irrigation project are hereby defined and declared to be as follows:

(a) Coolidge Dam and San Carlos Reservoir.

(b) Electrical power generating, transmission and distribution system.

(c) Ashurst-Hayden Diversion Dam.

(d) Florence-Casa Grande Canal to and including turnout to the Picacho Reservoir.

(e) Picacho Reservoir, Feeder Canal and Outlet Structure: *Provided, however,* That at any time in the future when the Picacho Reservoir is not or cannot be used for project storage or regulatory purposes, it and the outlet structure and feeder canal upon further order of the Secretary may be designated as part of the district works.

(f) North Side Canal from the Florence-Casa Grande Canal to the boundary of the Pima Indian Reservation.

(g) Pima Lateral to the boundary of the Pima Indian Reservation.

(h) Sub-laterals of the Pima Lateral outside of the reservation which serve in whole or in part Indian lands.

(i) Drainage and irrigation pumping works including wells and structures regardless of whether located within the district or the reservation.

(j) All structures on any and all of the above works, together with measuring devices such as measuring flumes or gauging stations used for the division of water as between Indian lands and district lands, even though some of such structures may be located in laterals and canals themselves designated as district or Indian works.

(k) Telephone lines and appurtenances belonging thereto.

(l) All project buildings paid for on joint account including the office building at Coolidge, the project garage and shops, including the shops at Olberg, and all machines and other equipment necessary for the operation

and maintenance of the joint works heretofore selected for that purpose by the project engineer and the officials of the San Carlos Irrigation and Drainage District: *Provided, however,* That in the event the project joint works organization does not need all the office and warehouse space to carry on the activities of the project joint works, the district and the Indian unit, or either, shall have the right to use such space for official purposes on the following conditions, to-wit:

(1) The project engineer shall have the right to determine the amount if any of still available space.

(2) The project engineer has determined that for the present, joint works will need approximately two-thirds of the available office space at Coolidge. The Indian unit has set up its office at Sacaton and makes that location the headquarters for its operation and maintenance activities on Indian lands and, therefore, no longer occupies any of the office space at Coolidge. The district therefore is permitted to use one-third of said office space until such time as the project engineer finds that the requirements of joint works for such office space increase or decrease. The occupancy of the office building at Coolidge or any other project building occupied by the district and/or the Indian unit shall be by mutual agreement of the project engineer, the district engineer and the engineer in charge of the Indian unit. Payment shall be made by the Indian unit or by the district for the cost of operating and maintaining space occupied in the office building at Coolidge or in such other project buildings as may be occupied by either unit for its exclusive use. Until the requirements of joint works increase the district may continue to occupy the approximate east one-third of the office building for which occupancy the district shall pay such sum per month from August 1, 1952 as has been or may be agreed upon in writing between the district and the project engineer. The use of such space, which shall include the right to use part of the basement space, and garage referred to in an agreement between the project engineer and the district engineer of August 25, 1952, approved by the Area Director on December 19, 1952, shall continue, subject to the paramount need for such space for joint works operations, and the judgment of the project engineer in this regard shall be final unless otherwise determined by the Secretary of the Interior. The monthly payments received shall be deposited in the joint works account of the project and applied as provided in the said agreement.

(3) The district and the Indian unit shall have the right at all times to the services of the project shops for official work on the following conditions:

(i) The shops shall be maintained for the purpose principally of doing work for the joint works part of the project.

(ii) The shops shall be operated at all times under the supervision and management of the project engineer who shall make such rules and regulations in regard to their operation as he may from time to time think necessary to promote efficiency and economy, including the time and method of payment for work done for the district or Indian units.

(iii) All shops work done for the district and the Indian units shall be done by the project shop organization on a cost basis, and shall be done only at such times as may not interfere with joint works requirements. All such work shall be done as between the Indian unit and the district on the basis of "first come, first served," except that the project engineer may do emergency work for either at any time, when in his judgment it is necessary.

(m) All lands upon which any of the foregoing buildings or structures are located and the rights-of-way therefor, including the right-of-way for the San Carlos and Picacho Reservoir sites.

(1) If at any time it shall be found that the project joint works does not require the use of some of said land, and any of it can be used advantageously by the district or the Indian unit, the project engineer may assign such area to either of said units for use without cost to be used by the unit to which assigned until needed by the project. The availability of such land for assignment as aforesaid, and the

purposes for which it may be used by the party to which it may be assigned, and the manner in which it shall be used and cared for shall be determined by the project engineer, whose judgment shall be final in case of disagreement in such matters.

(2) In the event the project engineer determines it is necessary for joint works to have and use any or all of the project buildings or premises in this order, or hereafter, assigned to the district, he shall give the district 6 months' notice in advance of the date when the district shall vacate any such buildings or premises occupied or used by it.

§ 221.69b District works.

(a) All project works not reserved in this part as joint works and which are used for the serving of district lands are hereby defined and declared to be district works.

(b) The district works as defined in this section are hereby turned over to the district beginning July 1, 1938, to be operated and maintained by the district and at its expense under management satisfactory to the Secretary of the Interior of the United States, until further order.

(c) The operation and maintenance of the district works by the district as provided for in this section shall be at all times done both as to quality and quantity in a manner satisfactory to the said Secretary. The district shall at all times keep the works hereby entrusted to its care for operation and maintenance in a satisfactory operating condition; it being understood in that regard that if at any time either the management or the operation and maintenance of the district works by the district shall prove unsatisfactory to the United States the Secretary of the Interior or his duly authorized representative, the project engineer, shall, in writing, call such matters to the attention of the district, and in the event such unsatisfactory matters are not corrected by the district within a reasonable time, the Secretary retains the right to withdraw from the district the privilege of operating and maintaining said works. What constitutes "a reasonable time" within the meaning of this section shall be determined and definitely set forth in any letter or notice calling any such unsatisfactory conditions to the attention of the district: *Provided, however,* That in the event any such notice shall be given by the duly authorized representative of the Secretary, his fixing of a reasonable time for remedying the unsatisfactory conditions called to the attention of the district in any such notice may be appealed to the Secretary whose decision in that regard shall be final.

§ 221.69c Indian works.

(a) All project works serving Indian lands not reserved in this part as joint works as defined in § 130.69a shall be considered and are hereby declared to be Indian works.

(b) All Indian works as defined in this section shall be operated and maintained by the United States and at its or the Indians' expense.

§ 221.69d Operation and maintenance charges; joint works.

(a) The joint works as defined will be operated and maintained by the United States and the cost thereof, including the administration of the Gila decree (such costs for the fiscal year beginning July 1,1938, are estimated to be $60,000) exclusive of the cost of operating and maintaining electric power generating plants at the Coolidge Dam and the diesel plant at Coolidge and the power transmission and distribution system, as well as all the appurtenances belonging to the project electrical system, which is payable from power revenues, and for the payment of which such revenues are now expected to be sufficient, shall be paid by the project landowners as provided for in the landowners' agreement and the repayment contract.

(b) Since the project consists of 50,000 acres of Indian lands and 50,000 acres of public and private lands, said cost of maintaining and operating the joint works shall be paid equally on account of the Indian lands and the public and private lands at a per acre rate to be established by order of the Secretary annually hereafter, which said rate shall produce such a sum of money as shall be determined by the Secretary to be the amount necessary

to meet, on the aforesaid basis, the proportionate share of the expense required by the project to maintain and operate the joint works.

(c) That part of the charges for operation and maintenance of the joint works to be borne by the district when so determined shall be paid on a fiscal year basis to the United States annually in advance, not later than the first day of March of each year, beginning the first of March 1939, all as provided in the repayment contract as amended, which said first payment shall be for the fiscal year 1940, and the United States or the Indians will make available the same amount of money each fiscal year for the operation and maintenance of the joint works for and on account of the Indian lands.

(d) Since the district has made payments to the project covering its share of the cost of joint works for the calendar year 1938, and its estimated share of the cost of the project maintenance to July 1, 1938, also the money collected by it for excess water deliveries during the year 1937; and since in any event there will be unadjusted credits due the district or payments due from it to the project on account of its share of said costs and its share of joint works maintenance and operation costs for the last half of the fiscal year 1939, it is hereby provided that any unadjusted credits or payments on account of said terms existing on July 1, 1938, shall be adjusted at the first opportunity after the actual figures are determined by the project engineer, in any event within 30 days after the project engineer furnishes the district with a statement of its account with the project as of July 1, 1938, for and on account of the aforesaid items. The project engineer in determining what amount if any the district owes the project on July 1st on account of said items shall allow the district credit for 50 percent of the total project revenues derived from excess water deliveries for the calendar year 1937, to the extent such revenues have been collected and are available for project uses, but no credit can be allowed the district on account of such revenues due for deliveries to Indian lands during 1937 until made available by Congress; credit for such uncollected amounts shall be allowed on future payments by the district.

§ 221.69e Delivery of water and operation and maintenance charges for district lands and works.

(a) The district, in accordance with the repayment contract, shall make an annual charge against lands of the district, designated in this section as the basic charge, for operation and maintenance of district works and for the district's share of operation and maintenance of joint works which charge when collected will, together with its proper share of revenue from the anticipated excess water charges hereinafter provided for, cover the cost of operating and maintaining said district works and pay the district's share of operating and maintaining the joint works.

(b) The district, in accordance with the repayment contract, shall deliver two (2) acre-feet of water or such part thereof as may be legally and physically available, to each irrigated acre in the district on payment of its said basic charge and any other charges due the district or the United States under the provisions of the Landowners' Agreement and the Repayment Contract: *Provided*, That all sums due the United States provided for in this section shall have been paid by the district in accordance with the provisions of this order and the terms of the repayment contract; all additional water, except free water, as provided for in the repayment contract shall be paid for by the landowners and collected by the district, at the rate of fifty cents ($.50) per acre-foot for the third acre-foot per acre and at the rate of one dollar fifty cents ($1.50) per acre-foot for all additional water delivered, but the Secretary retains the right to change at anytime the charge for excess water.

(c) In order to protect the interests of the United States and facilitate the collection of the construction charges due from the landowners within the district owing to the United States, it is further provided that the district shall maintain an organization which will not entail an overhead expense disproportionate to the services which

it renders the landowners in the operation and maintenance of such district works.

(d) It is further provided that if at any time the Secretary determines that the charges made by the district for operation and maintenance of the district works are excessive, the district shall proceed immeditately upon written notice from the Secretary of the Interior to reduce said cost, to a maximum to be fixed in such notice by the Secretary of the Interior and if within a reasonable time the district finds itself unable to meet the demands of the Secretary in that regard the Secretary may withdraw the operation and maintenance of the district works from the district. The Secretary retains full power to determine what constitutes a reasonable time within the meaning of this section.

§ 221.69f Delivery of water and operation and maintenance charges for and on account of the Indian lands and works.

As provided in this part, the United States will make available for operating and maintaining the joint works the aforesaid share thereof due on account of the 50,000 acres of Indian lands in said project. In addition thereto the United States or the Indians shall provide an amount of money which will be sufficient to meet the per acre cost of maintaining and operating the Indian works, which said per acre cost shall be termed the basic charge for Indian lands and shall be paid or provided for at the time and in the manner provided from time to time by the Secretary of the Interior in accordance with law and the repayment contract. It is further provided that when the basic charge for Indian lands plus the Indians' per acre share of the cost of joint works has been determined and the payment thereof made by the Indians in advance or provided for by the United States then there shall be delivered to each irrigated acre of Indian land two acre-feet of water or such part thereof as may be legally and physically available annually; and all additional water, except free water as provided for in the repayment contract, delivered to Indian lands shall be upon such terms as may be prescribed by the Secretary from time to time as provided for in Article 11 of the repayment contract, but until further order in that regard it shall be paid for in advance by the Indians or provided for by the United States in advance of delivery at the rate of fifty cents ($.50) per acre-foot for the third acre-foot per acre and at the rate of one dollar fifty cents ($1.50) per acre-foot for all additional water delivered.

§ 221.69g Application of funds from excess water deliveries and sales.

The revenue from charges for excess water deliveries shall be used and paid as provided in the repayment contract, and its provisions shall be considered as having been complied with as long as the district operates and maintains district works, if the said collections shall be made and applied as follows:

(a) Both the district and the Indian unit or the United States for the Indians shall be entitled to use 50 percent of the total of such charges due or collected hereafter from both Indian and district lands in any one year to meet, to the extent it will, their respective basic sum charges. Where deliveries to district lands exceed those to Indian lands or vice versa, any balance due to or owing from either by reason of such differences shall be adjusted at the end of each calendar year by proper payments from the district or credits to it. Such payments or credits to be made on or before March 1, of the succeeding year as provided in the repayment contract.

(b) In harmony with the act of March 7, 1928 (45 Stat. 210), and Article 12 of the repayment contract, it has been the practice since the San Carlos project has been in operation to furnish water when available to the State prison near Florence, and to the cities and towns in the project as well as to the agency grounds and gardens and the experimental farm at Sacaton, and it is believed that so long as that can be done it will be to the best interests of the project to continue such uses of water. It is contemplated that contracts and such proper orders as may be required will be made in the near future to carry that policy into effect on a well-defined and permanent basis. When that shall have been

done all such services as may be required from the district or the Indian unit to deliver water to said agencies shall be paid for as shall from time to time be provided by the Secretary of the Interior.

(c) All money received from the sale or leasing of water to any or all of the aforesaid public institutions for public enterprises, and beautification, where such service shall be rendered by the district or the Indian unit, shall after due compensation as aforesaid for such service, be used and paid in the same manner provided herein with reference to money received from the excess water deliveries. In the event, however, that the project joint works can and does render the service to any or all of said public institutions without using district or Indian unit works, it shall make the collections and the revenue shall go into the joint works operation and maintenance fund and be used to reduce the amount due for that purpose from the district and the Indian unit each year.

§ 221.69h Florence-Casa Grande project lands.

(a) There are certain lands of the Florence-Casa Grande project which have water rights, but have not been merged as yet with the San Carlos project. It is necessary that said lands be served in part through project canals the amount of water to which, under the law and the Florence-Casa Grande agreement, they are entitled. It is contemplated that contracts and proper orders shall be made with the Florence-Casa Grande landowners, which shall provide among other things for payment by them of construction costs and operation and maintenance charges of the Florence-Casa Grande project. The operation and maintenance charges collected from said lands shall be paid into the San Carlos project operation and maintenance fund and be used to reduce the assessments for joint works against Indian and district lands each year. The district shall be allowed due compensation however for any service which it may be required to and renders to said lands or to the State lands or cities and towns. The extent of service and compensation shall be agreed upon hereafter, but in the event an agreement cannot be reached in that regard mutually satisfactory to the project engineer, the district and the Indian unit, the Secretary retains the right to determine such matters.

(b) It is further provided that until such permanent arrangements have been consummated for the State lands, the cities, towns and villages, the Florence-Casa Grande lands and the non-project Federal agency lands at Sacaton, that the district will continue as in the past to deliver to the Florence-Casa Grande project lands, such water as they are entitled to in accordance with law and the Florence-Casa Grande agreement and shall collect from said landowners such operation and maintenance charges as shall be determined upon and fixed by the Secretary of the Interior from year to year, and it will also deliver to the State prison lands and the cities and towns such water as may be allotted to them upon the same terms as has heretofore been done. The Indian unit will make deliveries to the Federal agencies for which it shall also be allowed compensation to be hereafter fixed on a per acre basis: *Provided*, The project shall be allowed a credit of $1.80 per acre for service it performs on account of said agencies for the year 1937. All net revenue from collections made on said temporary basis shall be paid to the San Carlos project joint works.

§ 221.69i United States and district to keep and exchange records.

The district and the Indian unit or the United States for it will keep records of the amounts and rates of delivery of water to farm units of the district, and the amount and rate of delivery of water to the Indian lands, according to methods approved by the Secretary of the Interior. They will furnish to each other a summary of such amounts and rates of supply for their information. These records are to be kept open for inspection by the Indian unit, the United States and the district. Such records of the deliveries to district lands served through Government operated canals will be furnished the district in detail for assessment purposes.

§ 221.69j District compliance with Gila decree.

It is further provided that the district in the operation and maintenance of said district works and the delivery of water to the project lands within the district and the delivery of water to Florence-Casa Grande project lands shall use every legal means at its command to see that the terms of the Gila decree are not violated and to cooperate with the project engineer and the Federal court water commissioner in the enforcement of its terms and provisions.

§ 221.69k Division of project equipment.

(a) Equipment belonging to the San Carlos project shall be divided as between joint works, the district, and the Indian unit of the project, according to the needs of each unit. All equipment used or needed for the operation and maintenance of joint works shall first be selected from available project equipment by the project engineer and shall be designated as belonging to the project for joint works. A division of the remaining equipment shall be made by the district and the project engineer on such equitable basis as will most nearly equalize the benefits to both the district and Indian units in the use of said equipment in the operation and maintenance of their respective units of the project. In the event that an agreement cannot be reached as to this division the matter or disagreement shall be promptly referred to the Secretary of the Interior, together with a statement of the requirements of each as to such equipment, and his decision in the matter shall be final.

(b) The value of such equipment as may be taken over by the district or the Indian unit of the project shall be paid for by the party receiving it. The payment therefor shall be made to the project disbursing agent or other properly designated project employee. The amount to be paid by each of said parties for the equipment turned over to them, respectively, shall be the current, approved value of said equipment as shown on the project inventory and equipment accounts. Said equipment shall be paid for by the party receiving same at the time said property is turned over: *Provided, however,* That the district may use any unadjusted credit due it from the project on January 1, 1938, in payment for any such equipment taken over by it, and the Indian unit may pay for such equipment as it takes over such terms as may be agreed to by the project engineer, but in the event the said Indian unit takes over any such equipment on terms other than by payment at the time of delivery, it shall in any event pay the full value thereof as of the date when so taken over, even though the equipment be worn out or destroyed before it shall have been paid for.

(c) When, in the judgment of the project engineer, emergencies exist, or at such other times as in his judgment economies may be effected in the operation and maintenance work on any part of the project he may, at the request of the district or the Indian unit, use joint works equipment together with its operating crews to do the emergency work or effect economies, if it can be done without sacrificing joint works activities. In the event joint works equipment shall have been used as aforesaid, joint works shall be fully compensated by the unit for which the work shall have been performed, on an acutal per diem or shift basis, according to the procedure established by the project in accounting for the cost chargeable to the particular piece or pieces of equipment so used at the time such work may be done as aforesaid for the district or Indian unit.

§ 221.69l Certain features contingent on appropriations.

It should be remembered that the provisions of §§ 221.69a-221.69m, to the extent that funds are required to be made available by the United States beyond the fiscal year 1939, are dependent upon appropriations being made by Congress for such purposes. The United States, however, through its Secretary of the Interior, will use every legal effort at its command to see that the assessments which may become due for joint and Indian works as provided for herein are made available to the project or other proper Indian service official, to the end that

the project joint works and the Indian works may be maintained and operated in the best possible manner so as to promote efficiency and economy in the use of water and conserve the project water supply.

§ 221.69m Supervisory control retained.

Sections 221.69a–221.69l are not intended to be and shall not be construed as an amendment or modification of either the landowners' agreement or the repayment contract, but as an administrative operating order may pursuant to the provisions of the repayment contract for the purpose of defining the conditions upon which certain of the objectives provided for in said contract may be achieved. The secretary reserves the right to exercise at any time any and all rights, powers and privileges given him by law and the aforesaid contracts with reference to the San Carlos Federal Irrigation Project, whether specifically mentioned in §§ 221.69a–221.69l or not, including the right to supervise, through his duly authorized representatives, to the extent he may deem necessary, the doing of the maintenance and operation work conditionally delegated in §§ 221.69a–221.69l to the district. The Secretary also retains the right to modify §§ 221.69a–221.69l and impose new or modified conditions on the district from time to time and to permit the Indian unit to be operated in whole or in part by the Indians if deemed advisable; also to revoke in whole or in part, at any time, this or any amended or modified order.

Florence-Casa Grande Indian Irrigation Project, Arizona

§ 221.70 Charges.

Pursuant to the Act of May 18, 1916 (39 Stat. 130), and supplementary acts, and an agreement with the landowners commonly called the Florence-Casa Grande landowners' agreement, the operation and maintenance charges, including the administration of the Gila River Decree, which shall be assessed against privately owned lands of the Florence-Casa Grande Irrigation Project, are hereby fixed at $17.00 per acre for the calender year 1977, and until further notice.

[42 FR 15909, Mar. 24, 1977]

§ 221.71 Time of payment.

The per acre charge fixed in § 221.70 for the privately owned land shall be paid on or before March 1 of each year. Upon payment of the annual per acre charge fixed by section 221.70, each acre of such land shall be entitled to receive its proper proportionate share of the available water supply as provided for by the Florence-Casa Grande landowners' agreement referred to in § 221.70.

[37 FR 13174, July 4, 1972]

§ 221.72 Conditions.

The San Carlos Irrigation and Drainage District, pursuant to §§ 221.69a–221.69m, shall collect the charges as provided for in §§ 221.70 and 221.71, and shall make delivery of water to the lands of the Florence-Casa Grande Project. The District shall be compensated for such service at the rate of $8.50 per acre for each acre to which water shall be delivered and the charges collected, and shall pay the balance of such amount to the Project Engineer of the San Carlos Irrigation Project for the benefit of the joint works.

[42 FR 15909, Mar. 24, 1977]

Walker River Indian Irrigation Project, Nevada

§§ 221.73–221.82 [Reserved]

§ 221.83 Charges.

The annual basic operation and maintenance assessment rates for land to which water can be delivered under the Walker River Indian Irrigation Project in Nevada for the operation and maintenance of the project are hereby fixed at $7.00 per irrigable acre for non-Indian owned land and Indian owned land leased to non-Indians and $1.00 per irrigable acre for Indian owned land farmed and operated by Indians. The foregoing charges shall become effective for the calendar year 1977 and continued in effect thereafter until further notice.

[42 FR 11237, Feb. 28, 1977]

§ 221.84 Payment.

The annual charges fixed in § 221.83 shall become due on April 1 of each

year and are payable on or before that date. The delivery of water may be refused to tracts of lands for which the charges are not paid when due unless arrangements shall have been made as provided in this section. When an Indian owner of land under a trust patent or a fee patent, not under lease to a non-Indian, is financially unable to pay the charges from the proceeds of the crops, or from the proceeds of labor performed on the project works, or from any other source, the delivery of water may be continued if a written certificate be issued by the superintendent that such Indian is financially unable to pay his charges. Copies of such certificates shall be forwarded to the Commissioner of Indian Affairs and shall be subject to rejection or modification upon review. In such cases the charges shall be entered on the account and will stand as a first lien against the lands until paid but without penalty for delinquency. To all charges assessed against lands in non-Indian ownership and lands in Indian ownership under lease to a non-Indian lessee there shall be added a penalty of one-half of one percent per month or fraction thereof, from the due date, if not paid on or before July 1 following the due date.

[22 FR 10658, Dec. 24, 1957]

§ 221.85 Water users responsible for water after delivery.

It is the duty of the Indian Irrigation Service to furnish available water for beneficial irrigation use only. It is the duty of all water users of the project to aid in the prevention of the waste of water and of damage to adjacent lands. The water users are responsible for the water after it has been delivered to their lands, and are required to have their field ditches of proper capacity and in suitable condition for the use of economical heads of water.

[22 FR 10658, Dec. 24, 1957]

Zuni Pueblo Indian Irrigation Project, New Mexico

SOURCE: §§ 221.98 to 221.100 appear at 22 FR 10659, Dec. 24, 1957, unless otherwise noted.

§ 221.98 Charges.

In accordance with the provisions of the act of August 1, 1914 (38 Stat. 583; 25 U.S.C. 385) the operation and maintenance charges for irrigable lands of the Zuni Pueblo, New Mexico, are fixed as follows for the calendar year 1938 and subsequent years until further notice:

For tribal lands operated by the Zuni School or Sanatorium the rate shall be $2 per acre.

§ 221.99 Time of payment.

The charges fixed in § 221.98 shall be due and payable on April 1 of each year.

§ 221.100 Conditions of payment.

No water shall be delivered until the charges have been paid or until the superintendent shall have issued a certificate that provision has been made for such payment.

Miscellaneous Indian Irrigation Projects

§ 221.105 Charges.

Pursuant to the acts of August 1, 1914, and March 7, 1928 (38 Stat. 583, 45 Stat. 210; 25 U.S.C. 385, 387), the annual basic charges against the lands to which water can be delivered under the respective irrigation systems of the projects listed in this section are hereby fixed in the following amounts for non-Indian owned lands, Indian owned lands leased to non-Indians, and Indian owned and operated lands, for the calendar year 1979 and for each succeeding calendar year thereafter until further notice:

ANNUAL PER ACRE ASSESSMENT

Project	Non-Indian owned land	Indian-owned land leased to non-Indians	Indian-owned and operated land
Pyramid Lake	20.00	20.00	1.00
San Carlos Reservation	35.23	35.23	5.00
Warm Springs	2.00	2.00	0

[43 FR 29939, July 12, 1978]

CROSS REFERENCE: For establishment of operation and maintenance regulations and assessment rate for the San Xavier Indian Irrigation Project, Arizona, see §§ 221.170 to 221.174.

§ 221.106 Payment.

(a) The annual charges fixed in § 221.105 shall become due on April 1 of each year, are payable on or before that date, and any charges that remain unpaid after the due date shall stand as a first lien against the land until paid.

(b) The delivery of water shall be refused to all tracts of land for which the charges have not been paid when due, except in instances where the lands are in Indian ownership, not under lease to a non-Indian, and the Indian owners shall have made the necessary arrangements with the superintendent as hereafter provided. When any Indian owner of land not under lease to a non-Indian is financially unable to pay the operation and maintenance charges on the due date from cash on hand, the superintendent may make the necessary arrangements with such Indian owner as will permit him to perform labor on the irrigation project works with the understanding that the proceeds derived therefrom shall be applied in partial payment of the operation and maintenance charges; and/or the superintendent may make the necessary arrangements for such Indian owner to pay the operation and maintenance charges from the proceeds of the crops grown on the land when harvested and marketed within that calendar year, provided written statements to that effect are furnished by the Indian owner on or before the due date.

(c) In any instance where the superintendent is convinced that an Indian landowner, whose land is not under lease to a non-Indian, is financially unable to pay his operation and maintenance charges from proceeds of labor performed on the project works, or from the proceeds of the crops being grown on the land, or from any other source, the delivery of water may be continued if a written certificate is issued by the superintendent stating that such Indian is not financially able to pay his charges and copies thereof forwarded to the Commissioner of Indian Affairs for approval or rejection. In such cases the unpaid charges shall be entered on the accounts and will stand as a first lien against the land until paid but without penalty for delinquency.

[22 FR 10660, Dec. 24, 1957]

§ 221.107 Water users responsible for water after delivery.

It is the duty of the Indian Irrigation Service to furnish available water for beneficial irrigation use only. It is the duty of all water users of the project to aid in the prevention of the waste of water and of damage to adjacent lands. The water users are responsible for the water after it has been delivered to their lands, and are required to have their field ditches of proper capacity and in suitable condition for the use of economical heads of water.

[22 FR 10660, Dec. 24, 1957]

TRIBAL AND TRUST PATENT INDIAN LANDS OF SAN CARLOS PROJECT, ARIZONA

§ 221.110 Basic charge.

Pursuant to section 5 of the Act of June 7, 1924 (43 Stat. 476) and in accordance with the public notice issued on December 1, 1932, operation and maintenance charges are assessable against 50,000 acres of tribal lands and trust patent Indian lands of the San Carlos Indian Irrigation Project within the boundaries of the Gila River Indian Reservation, Arizona. For the calendar year 1977 and subsequent years, unless changed by further order, the basic rate assessed Indian owned land leased and operated by non-Indians is hereby fixed at $24.00 per acre. The basic charge shall entitle each acre of such leased land to have delivered for use thereon two (2) acre-feet of water per acre or its proportionate share of the available water supply. The assessment for those lands leased will be payable as provided in §§ 221.111 and 221.112. Charges for project operation and maintenance costs on account of Indian owned land used by Indians

shall not be imposed on the Indian owners of such land. (See Interlocutory Order of the Indian Claims Commission dated January 10, 1974, Gila River Pima-Maricopa Indian Community et al. v. The United States of America, Docket No. 236—E.)

[41 FR 42177, Sept. 27, 1976]

§ 221.111 Excess water charge.

For water delivered in excess of two (2) acre-feet per acre of Indian land leased to a non-Indian, there shall be charged $0.50 per acre-foot per acre for the first acre-foot of excess water or fraction thereof delivered, and $1.50 per acre foot or fraction thereof per acre of water delivered in excess of three (3) acre-feet per acre: *Provided*, There shall be no charge for free water delivered in accordance with existing regulations.

[40 FR 45427, Oct. 2, 1975]

§ 221.112 Time and place of payment.

Basic charges shall become due on January 1 of each year and shall be payable on or before March 1st; *Provided*, No water shall be delivered to lands leased to non-Indians prior to payment of said basic charge. Payment for excess water as provided in § 221.111 shall be made at the time of request or prior to the delivery thereof. Payment of these assessments and charges shall be made at the office of the Pima Agency Superintendent, Sacaton, Arizona.

[40 FR 45427, Oct. 2, 1975]

§ 221.114 Application for water service.

An application for water service shall be made to and approved by the Superintendent prior to the first delivery of water. For all subsequent deliveries of water, the water user will notify the watermaster or ditchrider when delivery is desired.

[40 FR 45427, Oct. 2, 1975]

§ 221.115 Distribution and apportionment of water.

The stored and pumped water of the project is deemed a common project water supply in which all lands of the entire project are entitled to share equally and all such water shall be distributed to the lands of the project as equitably as physical conditions permit. The portion of the common supply available for the Indian lands will be distributed in equal amounts per acres to each acre under cultivation and irrigation, in so far as is possible, and subject to beneficial use. Water users will be notified at the beginning of the season of the amount of stored and pumped water available and at later dates of additional apportionments as they are made. Waste of water by users must be avoided as far as is physically possible in order that the supply shall be sufficient for the entire area in crop. When floods produce a supply of water in excess of demands or available storage facilities, free water shall be declared available and all water users will be promptly notified thereof. Such water shall not be counted as a part of the apportioned share to the lands on which it is used.

[22 FR 10660, Dec. 24, 1957]

§ 221.116 Care of farm ditches.

Water users will be required to keep their farm ditches in suitable condition to take water from project laterals and to carry it to the lands being irrigated. Failure to do this may result in refusal of delivery of water to lands on which the farm ditches are not in condition to take the water ordered if this condition prevents proper operation of project laterals and structures and causes waste of water.

[22 FR 10660, Dec. 24, 1957]

Salt River Indian Irrigation Project, Arizona

§ 221.120 Basic assessment.

The basic operation and maintenance assessment against the lands under the Salt River Indian Irrigation Project in Arizona to which water can be delivered through the irrigation project works is hereby fixed at $13.20 per acre for the year 1976 and subsequent years until further notice. The payment of the per acre assessment shall entitle the land for which payment is made to receive three acre-feet

of water per annum, or such lesser amount as represents the proportionate share of the available water.

[40 FR 54425, Nov. 24, 1975]

§ 221.121 Payment.

The annual basic charge fixed in § 221.120 shall be due and payable on or before February 1 of each year unless changed by further notice. Charges not paid on the due date shall stand as a first lien against the lands until paid.

[40 FR 54425, Nov. 24, 1975]

§ 221.122 Delivery of water.

Delivery of water shall be refused to all tracts of land for which the basic charge remains unpaid on the due date except that water may be delivered (a) to irrigate Indian owned lands that are not under lease, permit, or other form of use by someone other than the Indian owner, upon the partial payment on or before the due date of not less than $2.00 per acre per annum of the basic charge; (b) to irrigate Indian owned lands not under lease, permit, or other form of use by someone other than the Indian owner when said owner is unable to pay any part of the basic charge, upon the performance of labor on project works and the prior agreement that he will pay from the proceeds received for such work at least an amount equal to $3.50 per acre per annum; and (c) to irrigate not to exceed 10 acres of Indian owned land when the Superintendent is of the opinion that an Indian landowner is unable to meet the requirements of paragraphs (a) or (b) of this section, when the Superintendent certifies to that fact. The Superintendent shall promptly furnish the director of the district, for approval or rejection, all such certifications. In such cases, covered by paragraphs (a), (b) and (c) of this section, the unpaid charges shall be entered on the accounts and will stand as a first lien against the land until paid, without penalty.

[22 FR 10661, Dec. 24, 1957]

§ 221.123 Excess water.

Additional water in excess of the basic apportionment of three acre feet per acre per annum may be purchased when the water is available at the rate of $15.50 per acre foot or fraction thereof, measured at the farm delivery point. Payment shall be made in advance of delivery. The energy crisis has caused unpredictable rapid increases in the cost of electrical energy. In order to provide funds to purchase the necessary electrical power to operate the well pumps, the cost per acre foot of excess water will be adjusted as the electrical energy supplier adjusts the rate at which electrical energy is supplied to the Salt River Indian Irrigation Project. Adjustment up or down to be made on the first day of the month following notification of the change in rates.

[40 FR 4306, Jan. 29, 1975]

BLACKFEET INDIAN IRRIGATION PROJECT, MONTANA

§ 221.130 Basic assessment.

Pursuant to the acts of Congress approved August 1, 1914; May 18, 1916; and March 7, 1928; 38 Stat. 583; 39 Stat. 142; 45 Stat. 210; 25 U.S.C. 385, 387, the basic rate of assessment of Operation and Maintenance charges against the irrigable lands to which water can be delivered under the Blackfeet Indian Irrigation Project, Montana, for the season of 1975 and subsequent years until further notice is hereby fixed at $4.00 per acre per annum for the delivery of not to exceed one and one-half acre feet of water per acre for the assessable area under constructed works, water to be delivered on demand based upon an estimated quota of the available supply.

[40 FR 4306, Jan. 29, 1975]

§ 221.131 Excess water assessment.

Additional water, when available, may be delivered upon request at the rate of $2.22 per acre foot or fraction thereof.

[40 FR 4307, Jan. 29, 1975]

§ 221.132 Payment.

(a) The assessment fixed in § 221.130 shall be due April 1 of each year and shall be payable on or before that date.

(b) The assessment fixed in § 221.131

for excess water shall be paid prior to the time of delivery.

(c) To all charges assessed against lands in non-Indian ownership and Indian lands under lease to non-Indian lessees which are not paid on or before July 1 of each year there shall be added a penalty of one-half of 1 per cent per month or fraction thereof from the due date, April 1, so long as the deliquency continues.

(d) In the event an Indian water user is unable to pay the assessment when due, water may be furnished upon certification by the Superintendent of the Reservation, that the land owner or his Indian lessee has agreed that the assessment will be paid from the proceeds of the crops or from other sources of income, or that such Indian is financially unable to pay such charges. In such cases where the Indians are financially unable to pay the charges, the unpaid charges shall be entered on the accounts as a first lien against the land without penalty for delinquency.

(e) All payments must be made to the Bureau of Indian Affairs through the Blackfeet Agency, Browning, Montana.

[23 FR 2402, Apr. 12, 1958]

San Xavier Indian Irrigation Project, Arizona

Authority: §§ 221.170 to 221.174, issued under § 1, 3, 36 Stat. 270, 272 as amended; 25 U.S.C. 385.

§ 221.170 Charges.

The annual basic operation and maintenance assessment rate for land to which water can be delivered under the San Xavier Indian Irrigation Project, Arizona, is hereby fixed at $60.00 per acre whether the water is used or not. Non-Indian owned land and Indian owned land leased to non-Indians shall pay the full assessment rate. Indian owned and operated land and Indian land leased and operated by Indians shall pay a minimum rate determined by the Superintendent based on the Indian owner's financial ability to pay but not to exceed the established basic assessment rate and shall be fixed prior to the beginning of the calendar year for which it is effective. The payment of the assessment rate shall entitle the water user to his prorated share of the water as determined by the production capacity of the wells and/or the availability of funds availabe to pay the pumping operation and maintenance costs. The foregoing assessment rates shall become effective for the calendar year 1976 and continue in effect thereafter until further notice.

[40 FR 52610 Nov. 11, 1975]

§ 221.171 Payments.

The annual basic water charge fixed in § 221.170 shall become due and payable on or before March 1 of each year, and any unpaid charges shall stand as a first lien against the land without penalty until paid.

[40 FR 52610, Nov. 11, 1975]

§ 221.172 Delivery.

The delivery of water shall be refused to all tracts of land for which the charges have not been paid except where the lands are in Indian ownership, not under lease to non-Indians, and the Indian owners are financially unable to pay the assessment when due. In such instances water may be delivered under the following conditions:

(a) The Indian owner shall make necessary arrangements with the Superintendent to pay the assessment from proceeds derived for labor performed on the project works as authorized by the Superintendent, or from proceeds of crops grown on the land when harvested and marketed within that calendar year.

(b) In any instances where the Superintendent is convinced that an Indian landowner, whose land is not under lease to a non-Indian, is financially unable to pay his assessment from proceeds for labor performed on the project works, or from the proceeds of crops grown on the land, or from any other source, water may be delivered following certification by the Superintendent to the official in charge of the irrigation project that such Indian is financially unable to pay the assessment.

[24 FR 3757, May 9, 1959]

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§ 221.173 Water users responsibility.

The water users are responsible for the water after it has been delivered to their lands, and are required to have their field ditches of proper capacity and in suitable condition for the economical use of the irrigation water.

[24 FR 3757, May 9, 1959]

§ 221.174 Distribution and apportionment.

All water of the project is deemed a common water supply in which all irrigable lands of the project are entitled to share equally and such water will be distributed to the lands of the project as equitably as physical conditions will permit.

[24 FR 3757, May 9, 1959]

Chuichu Indian Irrigation Project, Arizona

Source: §§ 221.190 to 221.195 appear at 24 FR 3759, May 9, 1959, unless otherwise noted.

§ 221.190 Charges.

The annual basic operation and maintenance assessment rates for land to which water can be delivered under the Chuichu Indian Irrigation Project, Ariz., for operation and maintenance of the project are hereby fixed at $26 per acre for non-Indian owned lands and Indian owned lands leased to non-Indians and $2 per irrigable acre for Indian owned lands farmed and operated by Indians. The foregoing charges shall become effective for the calendar year 1969 and continue in effect thereafter until further notice. Payment of the annual basic per acre rate entitles the landowner to delivery of not to exceed 4 acre feet of water per acre annually. Additional water, when available, may be delivered upon written application of the landowner or lessee at the rate of $5 per acre foot or fraction thereof.

[34 FR 1018, Jan. 23, 1969]

§ 221.191 Payments.

The annual charges fixed in § 221.190 shall become due on March 1 of each year and payable on or before that date, and any unpaid charges shall stand as a first lien against the land without penalty until paid. Charges for excess water shall be paid in advance of the delivery of water.

§ 221.192 Water delivery.

(a) The delivery of water shall be refused to all tracts of land for which the charges have not been paid when due, except where the lands are in Indian ownership, not under lease to non-Indians, and the Indian owner shall have made the necessary arrangements with the Superintendent as hereinafter provided. When any Indian owner of land not under lease to a non-Indian is financially unable to pay the operation and maintenance charges on the due date, the Superintendent may make the necessary arrangements with such Indian owner as will permit him to perform labor on the irrigation project works, the proceeds derived therefrom to be applied in partial payment of such charges. The Superintendent may also make necessary arrangements for such Indian owner to pay the operation and maintenance charges from the proceeds of the crops grown on the land when harvested and marketed within that calendar year, provided written arrangements to that effect are made with the Superintendent by the Indian owner prior to the delivery of water.

(b) In any instance where the Superintendent is convinced that an Indian landowner, whose land is not under lease to a non-Indian, is financially unable to pay his operation and maintenance charges from proceeds of labor performed on the project works, or from the proceeds of the crops being grown on the land, or from any other source, the delivery of water may be made to the land if a written certificate is issued by the Superintendent stating that such Indian landowner is not financially able to pay such charges. In such cases the unpaid charges shall be entered on the accounts and will stand as a first lien

against the land until paid but without penalty for delinquency.

§ 221.193 Water users' responsibility for water after delivery.

The water users are responsible for the water after it has been delivered to their lands, and are required to have their field ditches of proper capacity and in a suitable condition for delivery of irrigation water.

§ 221.194 Water service.

A water service schedule will be worked out by the Bureau of Indian Affairs in cooperation with the water users. The schedule shall be followed until modified or amended. Violation of the foregoing requirement by a water user shall be just cause for refusal to deliver water to his land.

§ 221.195 Distribution and apportionment.

The pumped water of the project is deemed a common water supply in which all lands of the entire project are entitled to share equally and such water will be distributed to the lands of the project as equitably as physical conditions will permit.

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SUBCHAPTER U—ELECTRIC POWER SYSTEM

PART 231—COLORADO RIVER IRRIGATION PROJECT, ARIZ.

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AUTHORITY: Sec. 2, 49 Stat. 1039; 54 Stat. 422; and 5 U.S.C. sec. 301.

SOURCE: 37 FR 16393, Aug. 12, 1972, unless otherwise noted.

§ 231.1 Purpose of regulations.

The rules and regulations in this part are approved for the conduct of the electric power system of the Colorado River Irrigation Project, Arizona and California. The rules and regulations of this part are subject to change by the proper authority and such changes will apply to all contracts then and afterwards in effect.

§ 231.2 Authority of Officer in Charge.

The Officer in Charge as referred to herein is the Superintendent of the Colorado River Indian Agency or his designated representative. The Officer in Charge or his designee is responsible for operation of the electric power system and enforcement of public notices establishing rates and regulations. He is fully authorized to carry out and enforce the rules and regulations in this part.

§ 231.3 Disputes.

In case of disputes regarding application of these rules and regulations and decisions of the Officer in Charge made pursuant thereto, appeal may be made to the Commissioner of Indian Affairs whose decision will be final. While an appeal is pending, electric service will not be discontinued except in case of emergency as provided for in §§ 231.26 and 231.29: *And provided further*, That payments or deposits are made as required in § 231.24.

§ 231.4 Applications; contracts.

In order to become a consumer under the Colorado River Irrigation Project electric power system, an application shall be made which becomes a contract upon the approval of the Officer in Charge. In general, services will be rendered to all applicants signing valid contracts where service lines exist. The Officer in Charge is authorized to reject applications where it does not appear that the rules and regulations in this part will be complied with, or when not to the interest of the United States. After 10 days from the issuance of a written notice to the consumer regarding failure to comply with these rules and regulations, the Officer in Charge may suspend or cancel the consumer's service contract. Negotiations for contracts involving special conditions or service

within town sites of record will be subject to approval by the Commissioner of Indian Affairs.

§ 231.5 Cash deposits.

A cash deposit or other form of guarantee in advance, in an amount of twice the estimated monthly bill, but not less than $50, will be required from all consumers except tribal, city, county, State, or Federal agencies. Where service to a consumer requires the construction of extensions beyond existing service lines, the consumer may be required by the Officer in Charge to deposit in advance an amount equal to one year's estimated billing.

[43 FR 6227, Feb. 28, 1978]

§ 231.6 Deposits returned.

The consumer's cash deposit, less the amount of any unpaid bills for electric service excepting the unused portion of deposits for extensions, will be returned to the consumer when service is discontinued by written order of the consumer.

§ 231.7 Extensions.

Except as provided in § 231.8, the construction of extensions within the limits of urban areas of single-phase circuits will not exceed 100 feet, and extensions of three-phase circuits will not exceed 80 feet, for each dollar of guaranteed monthly revenue. The construction of extensions in rural areas of single-phase circuits will not exceed 264 feet, and extensions of three-phase circuits will not exceed 132 feet, for each dollar of guaranteed monthly revenue. Extensions will be constructed along existing rights-of-way insofar as practicable.

§ 231.8 Extensions beyond specified distance.

If extensions are desired beyond the distances specified in § 231.7, or if project funds are not available, prospective consumers may, after appropriate written agreement with the Officer in Charge, furnish or pay for such satisfactory line material and labor as may be necessary to construct the additional extension. The agreement may provide that part or all of the cost of the extension will be refunded to the consumer by allowing him a monthly credit equal to 20 percent of his power bill each month until the agreed amount is refunded, but not to exceed 5 years.

§ 231.9 Extensions limited.

The Officer in Charge shall decline to construct any extension which in his opinion will be excessive in cost or detrimental to the best interest of the project, or for which appropriations and funds are not available. All extensions shall remain the property of the United States.

§ 231.10 Measuring extensions.

In measuring an extension there shall be included all the primary distribution circuit which it is necessary to build and also the length of the secondary circuit, to the point of connection with the consumer's service.

[41 FR 53320, Dec. 6, 1976]

§ 231.11 Rights-of-way.

Where there is no existing right-of-way or where no right-of-way has been acquired for such facilities, the consumer shall make or procure satisfactory conveyance to the United States of rights-of-way across all property necessary for the lines of the United States or incidental to the furnishing of service.

§ 231.12 Temporary service.

Temporary service refers to service to circuses, bazaars, fairs, construction works, and other business of such a nature that service on the premises will probably be discontinued within less than 1 year. Unless the payment of the cost is satisfactorily guaranteed, applicants for temporary service shall be required to deposit with the authorized collector a sum of money equal to the estimated net cost of installing and removing any facilities necessary in connection with furnishing such service, and also an additional sum approximately equal to the estimated bill for electric service: *Provided,* That if service is to continue for more than 2 months the said additional sum need not be greater than twice the estimated monthly bill. After serv-

ice is discontinued, an account shall be rendered to the consumer and proper adjustment shall be made.

§ 231.13 Type of service.

(a) Service for lights and usual domestic and other appliances, including motors of less than 7½ horsepower, will be single-phase, 120/240 volts, three wire, except when special approval for another type of service has been obtained from the Officer in Charge.

(b) Three-phase service at suitable voltage may be furnished for motor installations of 7½ horsepower and over, providing a three-phase circuit and the required voltage can be provided at the point where the consumer desires service.

(c) All service will be 60-cycle.

§ 231.14 Service connections.

(a) The consumer shall furnish and install the necessary service equipment in accordance with the following specifications:

(1) Service wires from the main line switch to the service entrance shall be encased in rigid steel conduit and shall be brought outside the building at a location most convenient to the lines of the United States. If brought out elsewhere, they shall be carried in rigid steel conduit to the point designated by the Officer in Charge. Service wires will not be carried over buildings to reach outlets where clearance of 8 feet for roofs less than one-fourth pitch, and 2 feet for roofs greater than one-fourth pitch, cannot be obtained. Outlets must be brought out at least 12 feet above the ground. If the consumer or his wiring contractor has any doubt as to the proper location for the service entrance, he should consult the Officer in Charge before the work is done.

(b) The ordinary method of connection with the street mains will be overhead wires. Consumers desiring the feed wires to run underground must run their own wires in approved conduit from the meter to the point where connection is to be made. Conduits on the consumer's service pole must be installed in a manner satisfactory to the officer in charge. Consumers desiring underground service extensions to a pole owned by the Government will provide needed materials to be placed on the pole. All connections to Government owned facilities will be made by Government personnel. Conduits must be provided at the upper end with a suitable weatherproof fitting installed not more than 18 inches below the service drop. The conductors must be of such size that at full load the voltage drop from the point of attachment on the pole to the building entrance will not exceed 2 percent.

(c) Not more than one service will be installed to any one building, except as provided by the applicable codes and approved by the officer in charge.

[37 FR 16393, Aug. 12, 1972, as amended at 41 FR 53320, Dec. 6, 1976]

§ 231.15 Entrance wires, switch, and protection.

(a) All meters will be the socket type. The meter will be furnished and installed by the United States. The meter socket will be furnished and installed by the consumer in a suitable place approved by the officer in charge. All meter sockets shall meet Edison Electric Institute—Association of Edison Illuminating Companies and National Electrical Manufacturers Association standards. On installations where the meter socket is separated from the load center, the consumer shall install the service wires in metal conduit, approved by the National Electrical Code, to the load center. This load center must contain an automatic breaker or fuse disconnect switch of an approved size for the connected demand. An additional grouping of branch fused disconnects or circuit breakers must be installed to serve lights, motors, or appliances as required by the National Electrical Code. The neutral wire shall not be fused.

(b) A main line entrance switch must be placed on the load side of the meter and adjacent thereto. This switch shall be fused on the load side of the switch or an automatic circuit breaker of approved type and capacity shall be installed. If fuses are used, they must be cartridge type when the voltage is in excess of 150 volts to ground. The neutral wire shall not be fused.

(c) Entrance wires must be carried to the meter in approved conduit and so arranged that they can be connected to the line side of the meter, and the load wires to the load side without crossing the wires near the meter.

(d) In the case of multiple-occupancy installations such as an apartment building, a multiple use commercial building or other structure in which more than one meter is required, the meters shall be assembled at one central location. Each metered location shall be clearly marked so as to make it possible to identify each consumer. Each metered circuit shall have a separate fused disconnecting means or breaker located at a readily accessible point near the meter.

[41 FR 53320, Dec. 6, 1976]

§ 231.16 Location and installation of meters.

Meters will be furnished and installed by the United States. The consumer shall provide and maintain the necessary meter box or cabinet, switches, wiring, and text facilities. The locations of meters must be satisfactory to the Officer in Charge and in accordance with the following specifications:

(a) All meters must be located as near as possible to the point of entrance of the service, in a clean, dry, safe place, where they will be free from vibration.

(b) Meters must be in readily accessible locations so that the meter readers and test men may have access to the meters without inconveniencing the consumer. Location on an open porch or in an approved shelter on the outside of a building will be satisfactory. Under no circumstance will meters be installed in attics, sitting rooms, bathrooms, rest rooms, bedrooms, kitchens, or over stoves, sinks, tubs, doors, windows, or in any location where the visits of the meter reader or tester will cause annoyance to the consumer.

(c) No meter will be installed more than 6½ feet nor less than 5½ feet above the floor or working level. Meters must not be located above stairways, porch steps, basement entrances, nor in any place where a short step ladder or chair cannot be safely placed for reaching the meter. For underground installation, meters will be placed on approved pedestals.

(d) Meter boards must be furnished by the consumer where meters are to be set on lath and plaster, concrete, brick, stone, metal, or uneven surfaces, or in other places where the meter cannot be conveniently supported directly on the wall or pole. Meter boards must be not less than three-quarters of an inch thick, of sound wood, surfaced on all sides and of ample dimensions for the meters. They must be mounted in a substantial manner with their faces set truly vertical.

(e) A working space of not less than 36 inches must be provided and maintained in front of every meter and meter box.

(f) Where potential or current transformers, associated meter tests switches, and terminal blocks are required for use with a meter, ample provision shall be made by the consumer for their mounting in a suitable cabinet furnished by the consumer. A ground wire shall be provided.

(g) [Reserved]

(h) No load wires of any description shall be carried within the same conduit as the supply wires. Tampering or in any way interfering with a meter or its connections is prohibited. The entire service installation must be satisfactory to the officer in charge and must conform to the provisons of the National Electrical Code of the National Board of Fire Underwriters for Electrical Wiring and Apparatus.

(i) Customer's responsibility: The customer shall exercise reasonable care in protecting the Project's meter and other Project-owned equipment located on his premises. Only Project employees or agencies, or persons authorized by law, are permitted to inspect or handle same.

(j) Regularly scheduled meter tests shall be in accordance with the American National Standards Institute (ANSI) Code for Electric Metering.

(k) Special meter tests: On request of a customer, the Project should within 10 days after receipt of such request, make special meter tests. The customer shall bear the cost of such tests, including meter removal and replacement when the meter is found to

be within the limits of acceptable accuracy as defined in paragraphs (k) and (l) of this section. Such cost shall be a charge of $30. In all other cases, the Project will bear the cost of the test.

(l) Replacement of meter: Whenever a customer requests the replacement of the service meter because of accuracy, such request shall be treated as a request for a test of such meter and, as such, shall fall under the provision of special meter tests.

(m) Standard of meter accuracy: The Project shall not place in service, or knowingly allow to remain in service without adjustment, any meter that has known error in registration of more than plus or minus two percent at light or at full load and unity power factor, or more than plus or minus three percent at full load and fifty percent power factor.

(n) Adjustment for inaccurate meter registration: Whenever a tested meter in service is found to be fast or slow beyond the limit of accepted accuracy as defined, the Project shall make an adjustment, based on the corrected registration for the period in which the meter was registering incorrectly, if such period is known and if not known for a period of not exceeding six months, but in no event for a period longer than the present customer's occupancy. Whenever any bill or bills have been adjusted or corrected as provided above and whenever such adjustment amounts to $1 or more, the Project shall credit to the customer any amount found to have been collected in excess of the proper amount, or the Project may require the customer to pay any additional amount due, as the case may be.

(o) Incorrect meter installation: whenever any customer shall have been over-charged or under-charged as a result of incorrect installation of a meter or the use of an incorrect meter multiplier in billing the account, the amounf of the over-charge shall be adjusted and credited to the customer, if in excess of $1 or amount of the under-charged may be adjusted and billed to the customer if in excess of $5, provided that in no event shall such period of adjustment exceed the length of time the service has been supplied to the customer through the incorrect metering installation at the present location.

[37 FR 16393, Aug. 12, 1972, as amended at 41 FR 53321, Dec. 6, 1976; 43 FR 6227, Feb. 14, 1978]

§ 231.17 Consumer responsible for equipment.

The consumer shall, at his own risk and expense, furnish, install, and keep in good and safe condition all electric wires, machinery, and apparatus which may be required for receiving electric energy from the United States, and for applying and utilizing such energy, including all necessary protective devices

§ 231.18 Change of consumer's equipment.

In the event the consumer shall make any appreciable load change either in the amount or character of the electric lamps, appliances, machinery, or apparatus installed upon his premises, he shall immediately give the Officer in Charge written notice thereof.

§ 231.19 Apparatus detrimental to service.

(a) The Officer in Charge may refuse to supply loads of a character that may seriously impair service to other consumers. He may require the consumer to provide suitable equipment to limit load fluctuations.

(b) All motors shall be provided with suitable starting devices or apparatus to limit their starting current. Motors of 15 h.p. and above shall be equipped with sufficient capacitance to maintain a minimum power factor of 90 percent.

(c) The Officer in Charge may discontinue electric service to any consumer who shall continue to use appliances or apparatus detrimental to the service after he has been notified to correct the condition and has failed to do so within a prescribed time.

§ 231.20 Wiring standards.

(a) All wiring and electrical apparatus on consumers' premises shall be installed in accordance with and conform to standards as prescribed by applicable local, county, or State code, or Federal regulations, or the National

Board of Fire Underwriters, as determined by the Officer in Charge.

(b) The United States reserves the right to make all service connections. No service will be connected where an inspection is required until the installation has been inspected and approved by the inspector.

§ 231.21 Meter reading.

Meters will be read at regular intervals. Should the seal of the meter be broken by other than the proper representative of the United States, or in case the meter fails to register correctly, the amount of power used by the consumer will be estimated from the records of his previous use and other available and proper information.

§ 231.22 Bills.

(a) Bills for electric service will be rendered monthly. Payments shall be made at the designated office of the Colorado River Agency. On initial connection the consumer will be billed on actual consumption if connection was made within 15 days prior to meter reading. Any period over the 15 days will be considered a full billing period.

(b) Removal bills, special bills, bills for temporary service, or bills rendered to persons discontinuing service are payable on presentation.

(c) Bills for a connection or reconnection service, and payments for deposits shall be paid before service is connected or reconnected. Reconnection service will be performed on advance payment of $15, during normal working hours, or $15 plus overtime expenses during non-working hours.

(d) Uncollected bills that require action by the U.S. Department of the Interior Solicitor's Office for collection shall include 50 percent administrative charge plus 1½ percent per month interest charge from date of delinquency.

[37 FR 16393 Aug. 12, 1972, as amended at 43 FR 6227, Feb. 14, 1978]

§ 231.23 Discontinuance of service on failure to pay bills.

(a) Bills are due and payable upon receipt. On failure of the consumer to pay his bill for electric service within 15 days after billing date, the Officer-in-Charge shall discontinue the supply of energy, and service to the same consumer will not be resumed at the same or at any other location until the consumer has paid all bills then due, plus a reconnection charge of $15, during normal work hours, or $15 plus overtime expenses during non-work hours.

(b) Checks returned due to insufficient funds or any other reason are considered nonpayment of bill and the Officer in Charge may discontinue the supply of energy and service as provided in paragraph (a) of this section. An accounting charge of $5 will be made to the consumer in addition to the applicable reconnect charge as provided in paragraph (a) of this section.

[37 FR 16393, Aug. 12, 1972, as amended at 43 FR 6227, Feb. 14, 1978]

§ 231.24 Disputed bills.

In case of a dispute between the consumer and Officer in Charge as to the correct amount of any bill for electric service furnished the consumer, the consumer may protest by depositing with the Officer in Charge the amount of the bill and file a written statement of his claim. The matter shall then be referred to the Commissioner of Indian Affairs as provided in § 231.3. Service will continue if the amount of each bill, as it becomes due, is deposited within 15 days of the date shown on the billing, pending a decision on the appeal.

§ 231.25 Notice by consumer.

A consumer about to vacate premises who desires discontinuance of service shall give a written request at least 2 days prior thereto, specifying the date he desires service to be discontinued. If such notice is not given, he will be held responsible for all electric energy furnished to such premises until the service is discontinued.

§ 231.26 Fraud; tampering.

Tampering or in any way interfering with meters, transformers, poles, conductors, or any part of the property of the United States is prohibited, and any violation of this provision shall be subject to prosecution pursuant to law. Service will be discontinued to any premises at any time when in the opinion of the Officer in Charge such

action is necessary to protect against abuse, fraud, or theft.

§ 231.27 Resale of electric power.

Service will be discontinued should a consumer resell electric energy delivered to such consumer from the Project electric power system.

[41 FR 53321, Dec. 6, 1976]

§ 231.28 Compensation of employees.

All employees are strictly forbidden to demand or accept any personal compensation for services rendered to a consumer.

§ 231.29 Noncompliance with rules.

Should a consumer be found to be violating these rules and regulations and should he not remedy the violation, the Officer in Charge may discontinue electrical service. Except in cases of emergency or as otherwise provided, the consumer will be given written notice of at least 5 days. The notice shall state the particular rule or regulation that has been violated and inform the consumer of the action to be taken. Advance notice need not be given in the event of the discovery of a dangerous consumer-caused condition.

§ 231.30 Definition of maximum demand.

The maximum demand for each month shall be defined as the average amount of power used by the consumer during that period of 30 consecutive minutes when such average is the greatest for that month as determined from time to time by the United States by suitable meters or other means.

§ 231.31 Interruptions to service.

The United States will furnish energy continuously so far as reasonable diligence will permit but the United States, its officers, agents, or employees shall not be liable for damages when, for any reason, suspensions of the operation of the power system of the United States, or any part thereof, interfere with the delivery of electrical energy to a consumer. Should such suspensions occur due to causes arising on the system of the United States, the minimum bills of consumers who are affected may be reduced 1 percent for each 8 hours or major fraction of total suspension occurring in 1 month.

§ 231.32 Written claim.

The consumer may make written claim, within 30 days after date of monthly bill, for reduction on account of any suspension or suspensions alleged to have occurred and not considered in such bill. If written claim is not made within 30 days, claim shall be deemed to have been waived. If any dispute arises as to whether there was a suspension of service, or whether any such suspension was due to causes arising on the power system, the matter shall be referred to the Commissioner of Indian Affairs as provided in § 231.3.

§ 231.33 Contingent upon appropriations.

All contracts are subject to appropriations being made by Congress from year to year of moneys sufficient to do the work provided for therein, and to there being sufficient moneys available to permit allotments to be made for the performance of said work. No liability shall accrue against the United States by reason of such moneys not being appropriated, nor on account of there not being sufficient moneys to permit sufficient allotments.

§ 231.34 Minimum contract period.

The minimum contract period is 1 year. The contract, however, may be terminated if the consumer vacates the premises, except in cases where an extension has been constructed to supply the consumer as stated in §§ 231.5 and 231.7. In this event any amount owing the consumer for a construction advance shall be forfeited.

[41 FR 53321, Dec. 6, 1976]

§ 231.51 Rate Schedule No. 1—Residential.

(a) *Application of Schedule.* This schedule applies to electrical service required for residential purposes in individual private dwellings and in individually metered apartments delivered through one meter to a customer at one premise either urban or rural, for domestic use only. The electrical service is to be used on the consumer's

own premises only and must not be resold.

(b) *Type of Service.* Single phase, 60 cycle, 120/240 volts.

(c) *Monthly Rate.* (1) $6.65 for the first 100 kilowatt-hours or less.

(2) 5.2 cents per kilowatt-hour for the next 300 kilowatt-hours.

(3) 4.4 cents per kilowatt-hour for the next 900 kilowatt-hours.

(4) 3.3 cents per kilowatt-hour for all additional kilowatt-hours.

(d) *Fuel Cost Adjustment.* An adjustment shall be added to each kilowatt-hour used equal to the estimated average purchased power adjustment (rounded to the nearest $.0001) paid by the Project to the Project's power supplier.

[43 FR 60899, Dec. 29, 1978]

§ 231.52 Rate Schedule No. 2—Commercial Rate.

(a) *Application of Schedule.* This schedule applies to electrical service required by commercial, industrial and off-reservation irrigation pumping for all uses when such service is supplied at one point of delivery and measured through one meter. The electrical service is to be used on the consumer's own premises only and must not be resold.

(b) *Type of Service.* Single or three phase, 60 cycle, at one standard voltage (120/240, 120/208, 270/480, or 480 volts).

(c) *Monthly Rate.* (1) $6.65 for the first 100 kilowatt-hours or less.

(2) 5.1 cents per kilowatt-hour for the next 900 kilowatt-hours.

(3) 4.1 cents per kilowatt-hour for the next 4000 kilowatt-hours.

(4) 3.1 cents per kilowatt-hour for all additional kilowatt-hours.

(d) *Demand Charge.* (1) None for the first 5 kilowatts.

(2) $2.77 per kilowatt for all billing demand over 5 kilowatts.

(e) *Minimum Charge.* (1) $8.50 or $2.77 per kilowatt of billing demand for billings demands over 5 kilowatts, or the amount specified in the contract whichever is greater, except where the Officer in Charge determines that the customer's requirements are of a distinctly recurring seasonal nature. Then the minimum monthly bill shall not be more than an amount sufficient to make the total charges for the twelve (12) months ending with the current month equal to twelve (12) times the highest monthly minimum computed for the same 12-month period.

(f) *Billing Demand.* The highest 15-minute integrated demand in kilowatts occurring during the month or the demand specified in a contract, whichever is greater.

(g) *Fuel Cost Adjustment.* An adjustment shall be added to each kilowatt-hour used equal to the estimated average purchased power adjustment (rounded to the nearest $.0001) paid by the Project to the Project's power suppliers.

[43 FR 60900, Dec. 29, 1978]

§ 231.53 Rate Schedule No. 3—Irrigation Pumping Rate.

(a) *Application of Schedule.* This schedule applies to electrical service required for pumping of irrigation water for irrigation systems located on the reservation, when such service is supplied at one point of delivery and consumption is measured through one meter and is approved by the Officer in Charge. Use must be limited to the customer's premises and must not be resold.

(b) *Type of Service.* Single or three phase, 60 cycle at one standard voltage (120/240, 120/208, 270/480 or 480 volts).

(c) *Monthly Rate.* (1) Energy Charge 1.9 cents per kilowatt-hour.

(2) Demand Charge $1.65 per kilowatt of billing demand.

(3) Minimum Charge $1.65 per kilowatt of billing demand.

[43 FR 60900, Dec. 29, 1978]

§ 231.54 Rate Schedule No. 4-Street and Area Lighting.

(a) *Application of Schedule.* This rate schedule applies to service for lighting public streets, alleys, thoroughfares, public parks, school yards, industrial areas, parking lots and similar areas where dusk-to-dawn service is desired. The Project will own, operate and maintain the lighting system including normal lamp and globe replacement.

(b) *Monthly Rate.*

Lamps	Per Lamp	
	Metered	Unmetered
(1) 175 watts, mercury vapor (approx 6,500 lumens)	$5.55	$6.65
(2) 250 watts, mercury vapor (approx 10,000 lumens)	7.00	8.50
(3) 400 watts, mercury vapor (approx 18,000 lumens)	9.50	12.10

(c) *Minimum Term of Service.* The minimum term of service will be twelve months, payable in advance. This advance payment may be waived by the Officer in Charge.

(d) *Installation Charge.* The customer will be required to pay the total installation costs including labor and materials as determined by the Officer in Charge. Ownership of all facilities will remain with the Project including lamp and globe replacement.

[43 FR 60900, Dec. 29, 1978]

§ 231.55 Adjustments due to Purchased Power Cost Changes.

The rate schedules given in §§ 231.51, 231.52, 231.53 and 231.54 shall be adjusted as necessary and appropriate to offset changes in costs of power and energy purchased from the power supplier(s) of the Project. Rate adjustments pursuant to this provision shall become effective upon unilateral action of the Area Director; however, when a rate adjustment is determined to be necessary, the Area Director shall give sufficient notice to customers and other interested parties.

[43 FR 60900, Dec. 29, 1978]

PART 232—FLATHEAD INDIAN IRRIGATION PROJECT, MONTANA

Sec.

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STANDARD RATE SCHEDULES

232.51 Rate schedule No. 1. Residential, urban and rural.
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232.55 Rate schedule No. 5: Irrigation pumping and sprinkling.
232.56 Rate schedule No. 6: Street and area lighting.

AUTHORITY: Sec. 7, 62 Stat. 273; 5 U.S.C. 301.

SOURCE: 41 FR 1899, Jan. 13, 1976, unless otherwise noted.

§ 232.1 Effective date; changes.

(a) The regulations in this part are for the conduct of the electric power system of the Flathead Project, Montana, hereinafter referred to as the Project.

(b) These service policies are a part of all oral or written contracts for furnishing or receiving electric service. A copy of the written contract forms can be inspected at the Project's offices.

(c) These regulations shall become effective with the first billing made after the second calendar month following the date of final publication in the FEDERAL REGISTER.

(d) The regulations in this part may be revised, amended, supplemented, or otherwise changed by duly delegated authority from the Secretary of the Interior. These rules and regulations cancel the previous rules and regulations of Part 232, Title 25, Code of Federal Regulations.

§ 232.2 Authority of project engineer.

The project engineer is responsible for the operation of the Electric Power System and the enforcement of the regulations in this part. He is authorized to carry out and enforce the regulations either directly or through the power superintendent or other project employees designated by him.

§ 232.3 Disputes.

Any aggrieved party may file with the project engineer a written complaint regarding the application of the regulations. Within fifteen days after its receipt, the project engineer shall render a written decision thereon and serve a copy thereof on the aggrieved party. Within fifteen days from receipt of such decision, the aggrieved party may take an appeal to the Commissioner of Indian Affairs who shall render his decision within sixty days and his decision shall be final. Pending the determination of an appeal, electric service shall be continued, except in cases in which the question of the existence of dangerous conditions on the premises of the consumer is involved, provided the consumer pays the amount of each bill for electric service prior to the time when it becomes delinquent. If the question of the amount of a bill is involved in an appeal the consumer shall be deemed to have paid the bill under protest and the payment shall be held in a special deposit account until the final decision has been made.

§ 232.4 Applications; contracts.

(a) Each applicant for electric service will be required to sign the Project's application and contract form or a special contract. Where special terms and conditions are involved, a contract may be executed and shall contain such provisions and stipulations as may be desirable to protect the interests of both the Project and the customer.

(b) Acceptance of service, with or without a signed application or contract, shall be subject to compliance with the terms of the applicable rate schedule and of these regulations.

(c) All service involving new construction shall be for a minimum of five years for permanent, domestic or commerical service. For area lighting service the minimum shall be for three years. For irrigation pumping the minimum shall be for five seasons. If the consumer vacates the premises, he shall be liable for the unpaid minimum contract revenue only to the extent that it is not liquidated by the succeeding occupants.

(d) The project engineer is authorized to reject applications which he deems to be adverse to the best interests of the Project.

§ 232.5 Deposits.

A cash deposit in the amount of approximately twice the monthly bill or a deposit of not less than $30.00 may be required from customers to guarantee the payment of electric service bills. In general, an applicant who is the owner of record of the permanent installation to be served will not be required to make a deposit until a delinquency in the payment of a bill has occurred. All services constructed under § 232.6c will be required to make a deposit to guarantee payment of bills. Deposits will be refunded upon termination of service and full payment of accounts, and also may be refunded at any time at the discretion of the project engineer.

§ 232.6 Extensions and construction.

(a) *Permanent installations.* In general, the Project will extend its overhead distribution facilities to serve permanent installations within its service area, provided the extension is physically and economically feasible. Normally, lines will be built in the most direct route from the nearest source of supply. The route shall be selected by the Project but will generally follow established roadways and utility easement areas when available. The prospective customer or customers will provide all necessary right-of-ways and perform such clearing of the right-of-way as directed by the project engineer without cost to the Project.

(b) *Funding.* If funds are available, the Project may absorb the cost of such extensions to the extent that the cost does not exceed six (6) times the annual guaranteed revenue to be derived from the extension. For purposes of this rule, extension cost shall include all normal costs except the cost of transformers, meters and other such fixed equipment. Estimated revenues shall be based upon the following limits:

(1) *Residential Service.* $60 to $180 per year exclusive of electric heat plus 20 cents per square foot per year of space to be heated electrically.

(2) *Seasonal use Residences.* $60 per year.

(3) *Commercial and Industrial.* Power charges for estimated typical demands and anticipated load factor energy uses.

(4) *Irrigation.* Guaranteed annual horsepower charge. (i) For extensions which cost more than can be funded by the Project, the customer shall make a cash payment of the balance of the total cost of the extension. Contracts may provide for a refund of part or all of the customer's contribution for construction of a facility if additional customers are later served from the facility or the contracting customer meets other specified contract conditions. The Project may, by contract, require the customer to advance the entire cost of installing facilities used in rendering service and shall credit the customer's, his successor's or assignee's account with an amount of up to 20% of his monthly kilowatt hour bill at the location during the life of the contract or until the specified amount of the advance has been refunded, but no claim for credit shall extend beyond five years. All extensions and equipment purchased under this provision shall be and remain the property of the Project. Any of these special contracts may require the payment of higher than rate schedule stipulated monthly minimums.

(ii) The project engineer may decline to construct any extension which in his opinion, will be excessive in cost or detrimental to the best interest of the Project. All extensions when initially energized, shall be and remain the property of the Project.

(c) *Construction service, short term service, temporary service and service to individual mobile homes and trailers.* The Project will require the customer to pay in advance the estimated cost of connecting, disconnecting, furnishing, installing and removing the facilities required to render such service. After termination of service, there shall be refunded any amount remaining on deposit in excess of the actual cost of installing and removing facilities, plus the unpaid amount of bills for electric power and energy. A deposit may also be required of the estimated bill for electric service, as well as any other deposits specified under § 232.5.

(d) *Trailer and mobile home courts.* Trailer and mobile home courts which are constructed to meet recognized standards may be provided electric service under the permanent customer extension policy. However, the Project will not construct or participate in the cost of the internal secondary wiring required to serve individual trailers or mobile homes. The Project will be the sole judge as to the number of primary delivery points required by the court to provide satisfactory service to individual users. Metering of the court may be one of two ways:

(1) A master meter can be provided at each delivery point to meter the delivery to the court. The energy from this type of metering shall be billed at the applicable general rate.

(2) Trailers or mobile homes may be supplied and billed through individual meters under the residential rate providing that the court owner provides each site with an adequate secondary service supply, individual metering service entrance panels that meet Project, State and National Electrical Code requirements, and the court owner guarantees payment of minimum bills on vacant stalls.

(e) *Underground extensions.* Underground line extensions in lieu of overhead extensions will be made only where mutually agreed upon by the Project and the customer. Such agreements shall provide that the customer will reimburse the Project the estimated cost of the underground facilities over the estimated cost of an equivalent overhead extension. The customer shall also advance any contribution to construction required under the general extension policies for permanent customers (Paragraph (a) of this section).

(f) *Other deposits.* Deposits to guarantee the payment of electric service bills will be in addition to any required above, and in accordance with § 232.5.

§ 232.7 Rights-of-way.

The Project will give every assistance in obtaining rights-of-way. The cost of such rights-of-way may be assessed the customer if extension or re-

location is for his benefit, however, the end responsibility of obtaining needed rights-of-way will rest with the applicant.

§ 232.8 Type of service.

Service for lights and the usual domestic and other appliances, including motors of less than five horsepower shall be single-phase, nominally 120 or 240 volts, and two- or three-wire, except when special written approval for another type of service has been obtained from the project engineer. Three-phase service at suitable voltage may be furnished for motor installations of five horsepower and over, provided a three-phase circuit of the required voltage and capacity is available where the service is desired. All service wi' be 60 cycle.

§ 232.9 Service connections.

(a) The consumer shall provide and maintain a service entrance with a meter socket and mainline breaker or distribution center complete with all necessary wires. This shall be located convenient to the lines of the Project and unless otherwise specified, on the outside of the building or on a service pole so that the meter socket is not more than 5'9" plus or minus 6", from the ground or floor. When prior approval by the project engineer has been obtained, meters may be mounted on approved service pedestals. The meter will be furnished by the Project and must be accessible to the meter reader at all times. The entire service installation must be satisfactory to the project engineer and must conform to the provisions then in force of the National Electrical Code of the National Board of Fire Underwriters for Electric Wiring and Apparatus. When an inspection is required by law or ordinance, the project engineer shall require a certificate of inspection and approval by the inspector before connecting a new service.

(b) The customer shall install, own and maintain all wiring and equipment beyond the point of delivery except meters and special facilities installed or furnished by the Project. If instrument transformers are required the customer shall furnish and install mounting brackets; install the instrument transformers, provide a suitable enclosure and all necessary conduit and wiring for metering as specified by the Project. It shall be the customer's responsibility to provide suitable protective equipment to adequately protect his installation.

§ 232.10 Metering.

(a) Project shall furnish the meter, and customer shall provide and maintain free of expense to the Project an unobstructed location satisfactory to Project in accordance with § 232.9 above. In the case of new installations in multiple-occupancy buildings such as apartment houses in connection with which more than one meter in a building is required, the meters shall be assembled at one central location, or in such other areas and with such other arrangements as may be approved by the project engineer. Each meter shall be clearly marked so as to make it possible to identify the consumer.

(b) Customer's responsibility. Customer shall exercise reasonable care in protecting Project's meter and other Project owned equipment located on his premises. Only Project employees or agents, or persons authorized by law are permitted to inspect or handle same.

(c) Final connection. Final connection of the meter shall in all cases be made by the Project.

(d) Meters sealed. All meters shall be sealed by the Project. The breaking of seal by unauthorized persons or tampering with meter or meter wiring is prohibited by law and is subject to summarily discontinuance of service.

(e) Schedule of meter tests. Project shall test its meters in accordance with the following procedure:

(1) Self contained single phase watt-hour meters.

(i) New meters: All meters received from a manufacturer will be tested for accuracy and inspection for mechanical defects.

(ii) Meters in service: A sample of up to 10% of meters in service will be selected each year for testing.

(2) Polyphase watt-hour meters,

meters used with instrument transformers and demand meters.

(i) New meters: All meters received from a manufacturer will be tested for accuracy and inspected for mechanical defects.

(ii) Meters in service: A sample of up to 20% of all such meters will be tested each year.

(f) Special meter tests. On request of customer, Project shall, within 10 days after receipt of such request, make special meter tests. Customer shall bear the cost of such tests, including meter removal and replacement when the meter is found to be within the limits of acceptable accuracy as defined in section (h). In all other cases Project will bear the cost of the test.

(g) Replacement of meter. Whenever a customer requests the replacement of the service meter because of accuracy, such request shall be treated as a request for a test of such meter and, as such, shall fall under the provisions of special meter tests.

(h) Standard of meter accuracy. The Project shall not place in service or knowingly allow to remain in service without adjustment any meter that has known error in registration of more than plus or minus two percent at light or at full load, and unity power factor, or more than plus or minus three percent at full load and fifty percent power factor.

(i) Adjustment for inaccurate meter registration. Whenever a tested meter in service is found to be fast or slow beyond the limit of accepted accuracy as defined, Project shall make an adjustment, based on the corrected registraton for the period in which the meter was registering incorrectly, if such period is known, and if not known for a period of not exceeding six months, but in no event for a period longer than present customer's occupancy. Whenever any bill or bills have been adjusted or corrected as provided above and whenever such adjustment amounts to $1.00 or more, Project shall credit to customer any amount found to have been collected in excess of the proper amount, or Project may require customer to pay any additional amount due, as the case may be.

(j) Incorrect meter installation. Whenever any customer shall have been over-charged or under-charged as a result of incorrect installation of a meter or the use of an incorrect meter multiplier in billing the account, the amount of the over-charge shall be adjusted and credited to the customer if in excess of $1.00, or the amount of the undercharge may be adjusted and billed to the customer if in excess of $5.00, provided that in no event shall such period of adjustment exceed the length of time the service has been supplied to the customer through the incorrect metering installation at the present location.

(k) Non-registering meter. When a meter fails to register for any period, for reasons beyond the reasonable control of the Project, the Project may estimate the charge for service during such period, such estimate to be based on the best available data.

§ 232.11 Change of equipment or additional load.

If a customer desires to change his load materially, he shall notify the Project sufficiently in advance so that the facilities necessary to serve can be arranged and suitable contracts worked out. If the customer fails to notify the Project and as a result of the Project's equipment is damaged, the customer may be held liable for the cost of such damage.

§ 232.12 Apparatus detrimental to service.

(a) *Fluctuating and intermittent loads.* For highly fluctuating loads and intermittent loads which seriously affect voltage regulation the Project may require the installation of suitable corrective devices, or assess a penalty charge or may refuse service.

(b) *Reactive power measurements and power factor penalties.* Reactive power measurements to determine the power factor of an installation may be made either by permanently installed instruments or by test and, when determined by test, the resulting power factor will remain in effect until a new determination is made. For low power factor devices the Project may require the correction to not less than 95% lead or lag, or may require a penalty

charge or may refuse service. Reactive power charges (power factor penalties) will be assessed in accordance with the provision of the rate schedule.

§ 232.13 Interruptions to service.

(a) The Project will furnish energy continuously so far as reasonable diligence will permit. Continuous electric service is not guaranteed and the Project, its officers, agents or employees shall not be liable for injury, loss or damage resulting from any failure or curtailment of electric service, nor shall such failure or curtailment constitute a breach of contract. The Project shall have the right to temporarily suspend service for the purpose of making repairs or improvements to facilities, but in such cases, when practicable, advance public notice shall be given and every effort made to make such interruptions as short as possible and at such times as will cause the least inconvenience to the customers.

(b) If the customer's service fails, he shall endeavor to determine if he has blown fuses, tripped breaker, or his equipment is at fault before calling the Project. The customer may be charged the cost of the service call if the trouble is found to be caused by his equipment or actions.

§ 232.14 Discontinuance by consumer and reconnection fee schedule.

(a) Disconnection for customer convenience or to avoid payment of minimum monthly bills will not be allowed. After a customer request for disconnect, the reconnection fee to the same account is as follows:

(b) No charge for reconnection prior to one month from date of disconnect. If the disconnect extends for longer than one month, the non-refundable fee will be $10.00 plus the monthly minimum of the account times the number of whole months elapsing since the date of disconnect.

(c) If the account is not connected for twelve months or over, the installation will be considered as abandoned and the Project may remove its facilities. Reestablishment of the removed service will be governed by § 232.6.

(d) Discontinuance of service will be allowed on stock water heaters, irrigation pumps, temporary services, construction services and those under a short term contract.

(e) Area lights will be disconnected with the mother account.

(f) A consumer shall give at least seven working days notice of his desire to discontinue or to reconnect the service. Special trips to the disconnect or reconnect for customer convenience will be billed to the customer.

§ 232.15 Discontinuance and refusal of service by the Project.

(a) *Discontinuance of service.* The Project may discontinue service to any customer including any or all accounts as follows:

(1) Without notice:

(i) In the event of any condition determined by the Project to be hazardous.

(ii) In the event of customer use of equipment in such a manner as to adversely affect the Project's equipment or service to others.

(iii) In the event of any unauthorized use or diversion of service or when any evidence of tampering with meters, transformers, poles or conductors, or interference with the proper functioning thereof is found.

(iv) Upon receipt of orders from proper government authority to discontinue service.

(2) Upon not less than 24 hours' notice:

(i) For violation of and/or noncompliance with any applicable Federal, State, Municipal or other local laws, regulations, and codes.

(ii) For failure of the customer to fulfill his contractual obligations for service.

(iii) For failure of the customer to permit the Project reasonable access to equipment or installation.

(3) Upon 72 hours' written notice (excluding holidays, Saturdays and Sundays):

(i) For non-payment of utility service bill following reasonable attempts by Project to effect collection or settlement. Whenever service is discontinued under this rule, Project shall not be required to restore service until a settlement has been made. Project shall also require customer to pay a $10.00 reconnection fee.

(b) *Refusal of service.* The Project may refuse service to any delinquent customer owing for service at a present or previous account, until such past balance has been paid or satisfactory arrangements have been made by delinquent customer for paying. These same provisions shall apply to any other member of the same household or firm when application by this member, in the opinion of the Project, may be a means for evading payment of the delinquent bill. The Project may refuse service if applicant refuses to make deposits as required.

§ 232.16 Billing procedure.

(a) *Bills for service.* Meters will normally be read and bills for electric service presented at regular intervals. Payment by consumer may be made in person or remitted by check or money order through the mails. The Project may refuse to accept personal checks for payment of bills.

(b) *Special bills.* Special bills, removal bills, bills for temporary service, bills rendered when premises are vacated or bills rendered to persons discontinuing service are due on presentation.

(c) *Bills due prior to service.* Bills for connection or reconnection of service and required cash deposits shall be paid before service is connected, or reconnected.

(d) *Delinquent bills.* If payment of a bill is not made on or before the fifteenth day following the date of its issue, the project engineer shall discontinue service after notice, and shall not restore the same until the consumer has paid all bills then due as well as a $10.00 reconnection charge, and satisfied any deposit requirement which may exist under § 232.50 The discontinuance of service shall not relieve the consumer of liability for minimum monthly payments guaranteed by him under his contract. A customer shall be notified in writing of the intent to disconnect. Such notice shall be mailed via the United States Post Office to the last known address of the customer. Should there be a dispute as to the amount of the bill paragraph § 232.3 shall apply.

(e) *Bills for new services.* The billing period of new service or new construction shall be started within thirty days after the construction is completed.

§ 232.17 Business located in residences.

Where a small business is conducted as part of a residence the Project shall determine the applicable rate schedule by considering the following factors:

(a) Advertising by display of signs or telephone listing.

(b) Additional construction to accommodate the business portion.

(c) The amount of space devoted to the business in comparison with the residential use.

(d) The facilities for handling customer access and encouragement for customers to enter the premises.

(e) By comparing the business to similar ones in separate buildings or those under the General Rate Schedule.

(f) If the business is licensed.

§ 232.18 Rooming and boarding houses.

Rooming and boarding houses shall be served under one of the general Rate Schedules if more than 50% of the total numbers or areas of sleeping rooms in a house are available to roomers on a rental basis or if the house is licensed as a place of business, it shall be recognized as a rooming house. If not more than 3 single rooms are available for rent, it shall not be recognized as a rooming house and the residential rate will prevail. A boarding house is defined as one which serves more than three guests and one which advertises as a boarding house, or is a licensed place of business.

§ 232.19 Compensation of employees.

All employees are strictly forbidden to demand or accept any personal compensation for services rendered to a consumer, or any gratuity by reason of the rendition of services.

§ 232.20 Hardship cases.

The project engineer may relax temporarily strict enforcement of regulation when in his judgment such enforcement would work undue hardship upon a consumer.

§ 232.21 Contingent upon appropriations.

All contracts are subject to appropriations made by Congress from year to year of monies sufficient to perform the work or render the service provided therein. No liability shall accrue against the United States by reason of the lack of appropriations.

STANDARD RATE SCHEDULES

§ 232.51 Rate Schedule No. 1: Residential, urban and rural.

(a) *Application of schedule.* This schedule is available for single-phase electric service delivered through one meter of a single family residence either urban or rural, for domestic and farm use, including operation of motors as part of the appliances within the residence, no one of which exceeds 5 horsepower in capacity. The electric service is to be used only on the consumer's own premises and must not be resold.

(b) *Monthly rate.* (1) 5.0 cents per kilowatt-hour for first 50 kilowatt-hours; (2) 2.5 cents per kilowatt-hour for next 50 kilowatt-hours; (3) 1.3 cents per kilowatt-hour for next 900 kilowatt-hours; and (4) 1.9 cents per kilowatt-hour for all over 1,000 kilowatt-hours.

(c) *Minimum bill.* $5.00 per month rural, $3.00 per month within incorporated municipalities.

§ 232.52 Rate Schedule No. 2: General.

(a) *Application of Schedule.* This schedule is available for single-phase or three-phase electric service not exceeding a maximum demand of 20 kilowatts delivered through one meter for use in lighting, heating, operating appliances, and as power for motors which do not exceed 5 horsepower in capacity. The electric service is to be used only on the consumer's own premises and must not be resold. The use of this schedule is required for a second delivery to a customer's installation that is already being served by Rate Schedule No. 1.

(b) *Monthly rate.* (1) 6.0 cents per kilowatt-hour for first 50 kilowatt-hours; (2) 3.0 cents per kilowatt-hour for the next 50 kilowatt-hours; and (3) 2.5 cents per kilowatt-hour for all over 100 kilowatt-hours.

(c) *Minimum bill.* $5.00 per month rural, $3.00 per month within incorporated municipalities.

§ 232.54 Rate Schedule No. 4: General.

(a) *Application of schedule.* This schedule is available for single-phase and three-phase electric services for all purposes. Unless specifically permitted by the contract, use must be limited to the consumer's premises and the power supplied must not be resold. If more than one meter is required by the consumer's installations, or for the consumer's convenience, a separate computation shall be made for each meter.

(b) *Monthly rate.* (1) 5.0 cents per kilowatt-hour for the first 50 kilowatt-hours per kilowatt of billing demand.

(2) 2.5 cents per kilowatt-hour for the next 50 kilowatt-hours per kilowatt of billing demand.

(3) 1.3 cents per kilowatt-hour for all additional kilowatt-hours.

(c) *Discounts.* The following discounts will be applied in accordance with the contract demand as defined below. Discounts do not apply to the minimum charge.

	Percent
Less than 11 kw. of contract demand	0
11 kw. and more but less than 15 kw. of contract demand	4
15 kw. and more but less than 20 kw. of contract demand	6
20 kw. and more but less than 25 kw. of contract demand	8
25 kw. and more but less than 32 kw. of contract demand	10
32 kw. and more but less than 40 kw. of contract demand	12
40 kw. and more but less than 48 kw. of contract demand	14
48 kw. and more but less than 58 kw. of contract demand	16
58 kw. and more but less than 70 kw. of contract demand	18
70 kw. and more but less than 85 kw. of contract demand	20
85 kw. and more but less than 100 kw. of contract demand	22
100 kw. and more but less than 125 kw. of contract demand	24
125 kw. and more but less than 150 kw. of contract demand	26
150 kw. and more but less than 175 kw. of contract demand	28
175 kw. and more but less than 210 kw. of contract demand	30
210 kw. and more but less than 245 kw. of contract demand	32
245 kw. and more but less than 295 kw. of contract demand	34
295 kw. and more but less than 360 kw. of contract demand	36

	Percent
360 kw. and more but less than 600 kw. of contract demand	38
600 kw. and more but less than 1,000 kw. of contract demand	40
1,000 kw. and more but less than 1,600 kw. of contract demand	41
1,600 kw. and more but less than 2,400 kw. of contract demand	42
2,400 kw. and more but less than 3,500 kw. of contract demand	43
3,500 kw. and more but less than 5,000 kw. of contract demand	44
5,000 kw. and over of contract demand	45

(d) *Additional discount.* If a customer takes delivery at the primary voltage of the distribution or transmission system of the Project and at a location where the Project has adequate and suitable facilities available for such delivery, and if the customer furnishes, installs, operates and maintains the substation or substations with step-down transformers, protective equipment and all other facilities (except metering equipment) needed by the customer in distributing and utilizing the delivery power and energy, all subject to conditions and specifications satisfactory to the project engineer, then in that case an additional discount will be allowed, to be applied after the monthly bill has been computed in accordance with the preceding schedule as follows:

(1) For three phase delivery at the Project distribution voltage, a discount of 5 percent.

(2) For three-phase delivery from the Project transmission system where not more than one transformation intervenes between the highest voltage of the Project power system and the delivery to the customer—a discount of 8 percent.

(e) *Minimum bill.* (1) $1.25 per month per kilowatt of billing demand, but not less than $12.50 per month.

(f) *Contract demand.* Each contract shall state the number of kilowatts which the customer expects to require and desires to have reserved for his service. This quantity is called the contract demand. The contract demand shall not be less than 10 kilowatts.

(g) *Actual demand.* The actual demand for any month shall be the average amount of power used during that period of 15 consecutive minutes when such average is the greatest for the month as determined by suitable meters, or if meters are unavailable, the actual demand shall be the connected load or such portion of the connected load as the project engineer may determine to be appropriate, based on available information as to the customer's use of connected lights and appliances or from check metering.

(h) *Billing demand.* The billing demand for a month shall be the contract demand or the actual demand for that month, whichever is the greater.

(i) *Power factor adjustment.* An adjustment for power factor will be made by increasing the billing demand for each month by one (1) percent for each one (1) percent or major fraction thereof by which the lagging power factor is less than 95%.

§ 232.55 Rate Schedule No. 5: Irrigation pumping and sprinkling.

(a) *Application of schedule.* This schedule is available for single-phase and three-phase service used exclusively for irrigation pumping and sprinkling during the irrigation season, normally April 15 through October 15, where service may be discontinued during the balance of the year and the transformers removed at the discretion of the Project. Unless specifically permitted by the contract, use must be limited to the consumer's premises and must not be resold. If more than one meter is required by the customer's installations, or for the consumer's convenience, a separate computation will be made for each meter.

(b) *Rate per season or fraction thereof.* $7 per horsepower connected; 0.9 cent per kilowatt-hour for all kilowatt-hours used.

(c) *Special terms and conditions.* (1) The minimum annual (seasonal) horsepower charge of $7 per connected horsepower shall be paid each year during the life of the contract. Payment shall be required each year before the service is connected. If the service has not been connected by the close of the irrigation season, but in no case later than October 15, the minimum annual (seasonal) charge will be assessed.

(2) At the close of the irrigation season, but in no case later than Octo-

ber 15 of each year, the meter will be read and the total seasonal energy use (kilowatt-hours) will be computed and billed. The bills shall be due and payable within 30 calendar days after date of issue.

(3) If an account becomes delinquent, the project engineer shall have the option to cancel the contract, remove the Project's facilities, and demand payment of all delinquent bills, plus any penalties provided in the contract for premature termination of the contract.

(4) For a delinquent account to be reconnected payment will be required for all delinquent bills, plus the estimated energy charge for the coming season, plus the annual seasonal charge of $7 per horsepower.

(5) An adjustment for power factor will be made by increasing the seasonal charge for the kilowatt-hours by one (1) percent for each one (1) percent or major fraction thereof by which the lagging power factor is less than 95%.

§ 232.56 Rate Schedule No. 6: Street and area lighting.

(a) *Application of schedule.* This schedule is available in the Project's service area where adequate capacity, phase and voltage are available for individual users of area lighting and for communities who desire a lighting system. Service is from dusk to dawn and the Project will own, operate and maintain the lights, including lamp and globe replacement and furnishing the necessary power and energy. Individual users of area lighting will be required to have another account under the residential or general rate schedules.

(b) *Rate per unit.* (1) Area light installed on existing pole or structure:

7,000 lumen unit—$4.00 per month.

20,000 lumen unit—$5.50 per month.

(2) Area light installed with new wood pole:

7,000 lumen unit—$5.00 per month.

20,000 lumen unit—$6.50 per month.

(c) *Special conditions.* (1) Where more than 150 feet of extension and/or one pole per unit are required the customer will make a nonrefundable contribution for the overage at actual cost to the Project. Ownership of all facilities remains with the Project.

(2) The original term of contract shall be not less than 3 years. Should termination be requested by the customer within the contract minimum period, he shall be liable for the in and out costs, or the balance of the contract charges, whichever is the lesser.

(3) In case of municipalities or other entities desiring a lighting system involving 10 or more lighting units with fixtures, supports, or poles or an entity desiring units differing from those supplied as standard, the project engineer shall negotiate a contract for supplying this service.

PART 233—SAN CARLOS INDIAN IRRIGATION PROJECT, ARIZONA

Sec.

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AUTHORITY: Sec. 5, 43 Stat. 476, 45 Stat. 210, 211; 5 U.S.C. 301.

SOURCE: 40 FR 58135, Dec. 15, 1975, unless otherwise noted.

§ 233.1 Effective date; changes.

The regulations in this part are approved for the conduct of the electric power system of the San Carlos Project, Arizona, referred to in this part as the Project. The regulations in this part shall become effective with the first billings made after the first day of the second calendar month which begins after the date of publication in the FEDERAL REGISTER. The regulations in this part are subject to change by the proper authority and such changes shall apply to all contracts then and thereafter in effect.

§ 233.2 Authority of Project Engineer.

The Project Engineer is responsible for the operation of the electric power system and the enforcement of the regulations in this part. He is authorized to carry out and enforce the regulations either directly or through the Power Manager or other Project employees designated by him.

§ 233.3 Disputes.

Any aggrieved party may file with the Project Engineer a written complaint regarding the application of the regulations. Within fifteen days after its receipt, the Project Engineer shall render a written decision thereon and serve a copy thereof on the aggreived party. Within fifteen days from receipt of such decision, the aggrieved party may take an appeal to the Commissioner of Indian Affairs who shall render his decision within sixty days and his decision shall be final. Pending the determination of an appeal, electric service shall be continued, except in cases which the question of the existence of dangerous conditions on the premises of the consumer is involved, provided the consumer pays the amount of each bill for electric service prior to the time when it becomes delinquent. If the question of the amount of the bill is involved in an appeal, the consumer shall be deemed to have paid the bill under protest and the payment shall be held in a special deposit account until the final decision has been made.

§ 233.4 Applications; contracts.

In order to contract for the delivery of power, a written application for service under this part accompanied by the required cash deposit and guarantee of the required minimum revenues to the Project, shall be filed with the Project Engineer. Upon acceptance by him, the application will become a contract. In general, such application will be accepted where service lines exist. When special terms and conditions are involved in contracting for service, the Project Engineer shall require the execution of a form of contract in which such terms and conditions are fully set forth. Each contract involving the construction of a new extension shall be for a period of at least one year, but if the consumer vacates the premises, he shall be liable for the unpaid guaranteed revenue only to the extent that it is not liquidated by the succeeding occupant of the premises. The Project Engineer is authorized to reject applications which he deems to be adverse to the best interests of the project.

§ 233.5 Deposits.

A cash deposit in an amount equal to twice the estimated monthly bill, but in no case less than $30.00 will be required from each applicant. The Project Engineer may require an additional deposit should it become apparent that the estimated amount is in-sufficient to cover two months bills. Any cash deposit, less the amount of any unpaid bills, shall be refunded after the termination of service. Before extensions are constructed each applicant may be required to deposit an amount sufficient to cover his portion of the required minimum charges for a period of not less than one year, and must otherwise establish his credit and satisfy the Project Engineer of his intention to take service and his ability to meet the guarantee.

[42 FR 13821, Mar. 14, 1977]

§ 233.6 Extensions.

(a) The length of an extension constructed at the expense of the Project shall not exceed 500 feet.

(b) The length of an extension shall include the horizontal length of both the primary and secondary circuits and the service drops. Insofar as practicable, all extensions shall be con-

structed along established highways. The prospective consumer, or consumers, shall furnish or procure satisfactory rights-of-way necessary for the lines and other facilities of the Project incidental to the furnishing of service. The Project Engineer may decline to construct any extension which, in his opinion, will be excessive in cost, or detrimental to the best interest of the Project, or for which funds are not available.

[42 FR 13821, Mar. 14, 1977]

§ 233.7 Installation or extension financed by consumer.

If funds are not otherwise available for an installation or extension, or if an extension to a prospective consumer will require new construction beyond the distances specified in § 233.6, the consumer or prospective consumer may, after executing an appropriate contract satisfactory to the Project Engineer, construct the needed installation or extension, or arrange to pay the Project to construct the needed installation or extension. Payment for construction by the Project shall be advanced prior to commencement of construction. Installations or extensions to be constructed by the consumer or prospective consumer shall be constructed in accordance with suitable plans and specifications approved by the Project Engineer. All installations or extensions when constructed shall be and remain the property of the United States.

[45 FR 5687, Jan. 24, 1980]

§ 233.8 Temporary service.

Temporary service refers to service to circuses, bazaars, fairs, construction works, and other activities or businesses of such a nature that service to the premises occupied by them will probably be discontinued within five months. An applicant for temporary service shall be required to deposit with the Project Engineer a sum of money equal to the estimated cost of installing and removing the necessary facilities and also an additional sum equal to the estimated bill for electrical service: *Provided, however,* That such additional sum need not be greater than three times the estimated monthly bill. After termination of service, there shall be refunded any amount remaining on deposit, in excess of the actual cost of installing and removing facilities, plus the unpaid amount of bills for electric power and energy, as determined by the Project Engineer.

§ 233.9 Type of service.

Service for lights and the usual domestic and other appliances, including motors of less than seven and one-half horsepower shall be single phase, nominally 120 or 240 volts, three wire, except when special approval for another type of service has been obtained from the Project Engineer. Three-phase service at suitable voltage may be furnished for motor installations of seven and one-half horsepower and over, provided a three-phase circuit of the required voltage and capacity is available where the service is desired. All service will be sixty cycle.

[42 FR 13822, Mar. 14, 1977]

§ 233.10 Service connections.

On each new service the consumer shall provide and maintain a service entrance at a location convenient to the lines of the Project, and all connections from the service entrance to the meter base and from the meter base to the main line circuit breaker or distribution center. The meter will be furnished by the United States. The meter socket will be furnished and installed by the consumer and in a suitable location preferably on the outside of the building, or service pole, where the meter will be accessible to the meter reader at all times. Except for underground service installations, the meter socket shall not be more than 6 feet nor less than 5 feet above the ground or floor. For underground service installations, the meter shall be mounted a minimum of 3 feet above the ground or floor. The entire service installation must be satisfactory to the Project Engineer and must conform to the provisions then in force of the National Electrical Code of the National Board of Fire Underwriters for Electric Wiring and Apparatus. When alterations of a consumer's premises make it necessary to move an existing

meter loop, the consumer may be required to install a meter socket in the new loop, located in conformity with the stipulations of this section. When an inspection is required by municipal ordinance, the Project Engineer shall require a certificate of inspection and approval by the municipal inspector before connecting a new service.

[42 FR 13822, Mar. 14, 1977]

§ 233.11 Connection methods.

Service to a consumer's premises will ordinarily be supplied by means of overhead conductors. A consumer may at his own expense provide for an underground service. Such an underground service must be installed in accordance with the provisions of the National Electrical Code and shall be terminated on the pole at a location and in the manner directed by the Project Engineer. No connection from the circuits of the Electrical Power System to a consumer's service entrance shall be made except by the Project or its agents.

§ 233.12 Metering.

(a) The Project shall furnish the meter, and the customer shall provide and maintain free of expense to the Project an unobstructed location satisfactory to the Project in accordance with § 233.11 above. In the case of new installations in multiple-occupancy buildings such as apartment houses in connection with which more than one meter in a building is required, the meters shall be assembled at one central location, or in such other areas and with such other arrangements as may be approved by the Project Engineer. Each meter shall be clearly marked so as to make it possible to identify the consumer.

(b) Customer's responsibility. The customer shall exercise reasonable care in protecting the Project's meter and other Project-owned equipment located on his premises. Only Project employees or agents, or persons authorized by law are permitted to inspect or handle same.

(c) Final connection. Final connection of the meter shall in all cases be made by the Project.

(d) Meters sealed. All meters shall be sealed by the Project. The breaking of a seal by unauthorized persons or tampering with a meter or meter wiring is prohibited by law and is subject to summarily discontinuance of service.

(e) Regularly scheduled meter tests shall be in accordance with the American National Standards Institute (ANSI) Code for electricity metering.

(f) Special meter tests. On request of a customer, the Project shall, within 10 days after receipt of such request, make special meter tests. The customer shall bear the cost of such tests, including meter removal and replacement when the meter is found to be within the limits of acceptable accuracy as defined in section (h). In all other cases the Project will bear the cost of the test.

(g) Replacement of meter. Whenever a customer requests the replacement of the service meter because of accuracy, such request shall be treated as a request for a test of such meter and, as such, shall fall under the provision of special meter tests.

(h) Standard of meter accuracy. The Project shall not place in service or knowingly allow to remain in service without adjustment any meter that has known error in registration of more than plus or minus two percent at light or at full load and unity power factor, or more than plus or minus three percent at full load and fifty percent power factor.

(i) Adjustment for inaccurate meter registration. Whenever a tested meter in service is found to be fast or slow beyond the limit of accepted accuracy as defined, the Project shall make an adjustment, based on the corrected registration for the period in which the meter was registering incorrectly, if such period is known, and if not known for a period of not exceeding six months, but in no event for a period longer than the present customer's occupancy. Whenever any bill or bills have been adjusted or corrected as provided above and whenever such adjustment amounts to $1.00 or more. The Project shall credit to the customer any amount found to have been collected in excess of the proper amount, or the Project may require the customer to pay any additional amount due, as the case may be.

(j) Incorrect meter installation. Whenever any customer shall have been over-charged or under-charged as a result of incorrect installation of a meter or the use of an incorrect meter multiplier in billing the account, the amount of the over-charge shall be adjusted and credited to the customer if in excess of $1.00 or the amount of the under-charge may be adjusted and billed to the customer if in excess of $5.00, provided that in no event shall such period of adjustment exceed the length of time the service has been supplied to the customer through the incorrect metering installation at the present location.

(k) Non-registering meter. When a meter fails to register for any period, for reasons beyond the reasonable control of the Project, the Project may estimate the charge for service during such period, such estimate to be based on the best available data.

[42 FR 13822, Mar. 14, 1977]

§ 233.13 Consumer responsibility.

The consumer shall furnish, install and maintain at his own risk and expense in good and safe condition all protective devices, electric wires, lines, machinery, apparatus, and appliances which may be required or used for receiving and consuming electric energy obtained from the Project. The consumer shall be responsible for conforming to the regulations of the National Board of Fire Underwriters and to any other regulations applicable to his installation.

§ 233.14 Change of equipment.

In the event that a consumer proposes to make any material change in the amount, size or character of the electrical equipment installed on his premises, he shall immediately give written notice of his intention to the Project Engineer.

[42 FR 13822, Mar. 14, 1977]

§ 233.15 Apparatus detrimental to service.

The Project Engineer may refuse to supply loads of a character detrimental to the system, or to service to other consumers, and he may require the installation of suitable corrective devices.

§ 233.16 Motor starting equipment.

Motors having a rated capacity of three horsepower or more shall be provided with such starting and overload equipment as may be required by the Project Engineer. In no case will the Project Engineer approve "across the line staring" of motors larger than 150 horsepower.

§ 233.17 Service discontinued.

The Project Engineer may discontinue electric service to any consumer who shall continue to use appliances or apparatus detrimental to the Electric Power System after he has been notified to correct the condition and has failed to do so within a reasonable time. The Project Engineer may also discontinue service for failure of the consumer to comply with any of the provisions of this part.

[42 FR 13822, Mar. 14, 1977]

§ 233.18 Bills for service.

Meters will normally be read and bills for electric service will be rendered at regular intervals. Payments by consumers should be made in person or remitted by check or money order, payable to the order of the Treasurer of the United States, and mailed to the designated office of the Project.

§ 233.19 Special bills.

Special bills, removal bills, bills for temporary service, bills rendered when premises are vacated or bills rendered to persons discontinuing services are due on representation.

§ 233.20 Connect, reconnect, and accounting charges.

A nonrefundable service establishment fee of $10.00 will be charged each time the Project is requested to establish or reestablish electric service to the customer's delivery point. The charge will be included in and rendered with the first month's bill for electricity after connection or reconnection service. An accounting charge of $5 will be made when a check is returned unpaid by a bank because of insufficient funds or other reasons. This charge will be in addition to any other

applicable charges and will appear on the next month's bill for electricity.

[42 FR 13822, Mar. 14, 1977]

§ 233.21 Delinquent bills.

Bills for electric service will be delinquent if not paid on or before the tenth day following the date of issue of a bill showing arrears. When such delinquency occurs, the Project enginer shall discontinue service and service shall not be restored until the consumer has paid all bills then due plus a reconnection charge of $12.50 and has made the deposit required under § 233.5. (Discontinuance of service for delinquency shall not relieve the consumer of liability for minimum monthly payments guaranteed by him under his contract.)

[42 FR 13822, Mar. 14, 1977]

§ 233.22 Discontinuance by consumer.

Notice of his desire to have service disconnected shall be given by the consumer at least two days in advance. In the absence of such notice the consumer will be held liable for payment of all electrical energy furnished to such vacated premises until service is discontinued. Final bills may be paid by application of the consumer's guarantee deposit to the extent that they are covered thereby. Any surplus remaining in the deposit will be returned to the consumer after the contract is terminated. Where the deposit is insufficient, the consumer will be billed for the difference which shall be immediately due and payable.

§ 233.23 Fraud; tampering.

Service shall be discontinued by any consumer, or to any premises at any time when, in the opinion of the Project Engineer, such action is necessary to protect against abuse, fraud, or theft. Tampering or in any way interfering with meters, transformers, poles, conductors, or any part of the property of the Project is prohibited and is subject to prosecution pursuant to law.

§ 233.24 Compensation of employees.

All employees are strictly forbidden to demand or accept any personal compensation for services rendered to a consumer, or any gratuity by reason of rendition of services.

§ 233.25 Hardship cases.

The Project Engineer may relax temporarily strict enforcement of a regulation when in his judgment such enforcement would work undue hardship upon a consumer.

[42 FR 13822, Mar. 14, 1977]

§ 233.26 Interruptions to service.

(a) The United States will furnish energy continuously so far as reasonable diligence will permit. But the United States, its officers, agents or employees, assume no liability for damages due to interruptions of service to the consumer.

(b) If the customer's service fails, he shall endeavor to determine if he has blown fuses, tripped breaker, or his equipment is at fault before calling the Project. The customer may be charged the cost of the service call if the trouble is found to be caused by his equipment or actions.

[42 FR 13822, Mar. 14, 1977]

§ 233.27 Contingent upon appropriations.

All contracts are subject to appropriations made by Congress from year to year of monies sufficient to perform the work or render the service provided therein. No liability shall accrue against the United States by reason of the lack of appropriations.

§ 233.51 Rate schedule No. 1—Residential rate.

(a) *Application of schedule.* This schedule is applicable to single-phase or three-phase service for residences and small, non-commercial users. Unless specifically permitted by the contract, use must be limited to the consumer's own premises and power supplied must not be resold. If more than one meter is required by the customer's installation or for the customer's convenience, bills will be independently calculated for each meter.

(b) *Monthly rate.* (1) $8.00, minimum which includes the first 50 kilowatthours;

(2) 8.0 cents per kilowatt-hour for the next 100 kilowatt-hours;
(3) 5.1 cents per kilowatt-hour for the next 350 kilowatt-hours;
(4) 4.4 cents per kilowatt-hours for all additional kilowatt-hours.

(c) *Minimum bill.* The minimum bill shall be $8.00 per month except when a higher minimum bill is stipulated in the contract.

(d) *Purchased power adjustment.* An adjustment shall be added to each KWH used equal to the estimated average purchased power adjustment (rounded to the nearest $0.0001) paid by the Project to Project's power suppliers.

[45 FR 5687, Jan. 24, 1980]

§ 233.52 Rate schedule No. 2—General rate.

(a) *Application of schedule.* This schedule is applicable to single-phase or three-phase electric service for all purposes except residence and small, non commercial users. Unless specifically permitted by the contract, use must be limited to the customer's premises and the power supplied must not be resold. If more than one meter is required by the customer's installation or for the customer's convenience, bills will be independently calculated for each meter.

(b) *Monthly rate.* (1) $8.00 minimum which includes the first 50 kilowatt-hours;
(2) 9.6 cents kilowatt-hour for the next 350 kilowatt-hours;
(3) 5.7 cents per kilowatt-hour for the next 600 kilowatt-hours;
(4) 3.1 cents per kilowatt-hour for the next 9,000 kilowatt-hours.
(5) When use is 10,000 kilowatt-hours or more: First 10,000 kilowatt-hours $354.80.
(6) Additional kilowatt-hours at 3.1 cents per kilowatt-hour, less a credit of .6 cents per kilowatt-hour for each kilowatt-hour above 200 times the billing demand (50 KW minimum).

(c) *Minimum bill.* The minimum bill shall be $1.75 per month per kilowatt of billing demand, except where the customer's requirements are of a distinctly recurring seasonal nature. Then the minimum monthly bill shall not be more than an amount sufficient to make the total charges for the twelve (12) months ending with current month, equal to twelve times the highest monthly minimum computed for the same twelve month period. However, no monthly billing shall be less than $8.00.

(d) *Contract demand.* Each contract for 15 KW or over shall state the number of kilowatts which the customer expects to require and desires to have reserved for his service. This quantity is called the contract demand.

(e) *Actual demand.* The actual demand for any month shall be the average amount of power used during the period of 15 consecutive minutes when such average is the greatest for the month as determined by suitable meters, or, if meters are unavailable, the actual demand shall be the connected load or such portion of the connected load as the Project Engineer may determine to be appropriate based on available information as to the customer's use of connected lights, appliances, and equipment, or from check metering.

(f) *Billing demand.* The billing demand for a month shall be the contract demand or the actual demand for the month, whichever is greater.

(g) *Purchased power adjustment.* An adjustment shall be added for each KWH used equal to the estimated average purchased power adjustment (rounded to the nearest $0.0001) paid by the Project to the Project's power suppliers.

[40 FR 58135, Dec. 15, 1975, as amended at 45 FR 5687, Jan. 24, 1980]

§ 233.53 Rate schedule No. 3—Street and area lighting.

(a) *Application of schedule.* This rate schedule applies to service for yard lighting, lighting streets, alleys, thoroughfares, parks, schoolyards, industrial areas, parking lots, and similar areas where such dusk-to-dawn service is desired. The Project will own and operate lighting systems and provide normal lamp replacements.

(b) *Monthly rate.* (1) Lamps:

	1	Each 2 to 5	5 or more
200 W or less, incandescent (2,800 lm or less)	5.30	5.20	5.20
175 W mercury vapor (approximately 6,500 lm)	8.50	7.60	6.80
250 W mercury vapor (approximately 10,000 lm)	10.30	9.40	8.50
400 W mercury vapor (approximately 18,000 lm)	13.70	12.00	10.30

The minimum term of a service contract will be 12 months, payable in advance. The advance payment may be waived in special cases by the Project Engineer. Installation charges, the cost of wood poles or special steel, aluminum, or other supports, special fixtures, and the cost of underground service will be charged as determined by the Project Engineer.

[45 FR 5688, Jan. 24, 1980]

§ 233.54 Rate adjustments due to purchased power cost changes.

The rate schedules given in §§ 233.51, 233.52 and 233.53 shall be adjusted as necessary and appropriate to defray increases in costs of power and energy purchased from the power supplier(s) of the Project. Rate adjustments pursuant to this provision shall become effective upon unilateral action of the Area Director; however when a rate adjustment is determined to be necessary, the Area Director shall give sufficient notice to customers and other interested parties.

[45 FR 5688, Jan. 24, 1980]

SUBCHAPTER V—TERMINATION OF FEDERAL-INDIAN RELATIONSHIPS

PART 242—CALIFORNIA RANCHERIAS AND RESERVATIONS—DISTRIBUTION OF ASSETS

Sec.

242.1 Purpose and scope.
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242.9 Beneficial interest.
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242.12 Notice of termination.
242.13 Special instructions.

AUTHORITY: Sec. 12 of the Act of August 18, 1958 (72 Stat. 619), as amended by the Act of August 11, 1964 (78 Stat. 390).

SOURCE: 30 FR 10099, Aug. 13, 1965, unless otherwise noted.

§ 242.1 Purpose and scope.

The purpose of this part is to provide policies and procedures governing distribution of the assets of rancherias and reservations lying wholly within the State of California.

§ 242.2 Definitions.

As used in this Part 242, terms shall have the meanings set forth in this section.

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Commissioner" means the Commissioner of Indian Affairs.

(c) "Director" means the Area Director, Bureau of Indian Affairs, Sacramento Area Office, Sacramento, Calif., or his authorized representative.

(d) "Adult Indian" means any Indian who is an adult under the laws of the State in which he is domiciled.

(e) "Distributee" means any Indian who is entitled to receive any assets of a rancheria or reservation under a plan prepared and approved pursuant to section 2 of the Act of August 18, 1958 (72 Stat. 619), as amended by the Act of August 11, 1964 (78 Stat. 390).

(f) "Dependent members," as used in the phrase "dependent members of their immediate families," means all persons of Indian descent not sharing directly in the distribution of rancheria or reservation assets who: (1) Are related to the distributee by blood or adoption or by marriage, including common law or Indian custom marriage; (2) are domiciled in the household of the distributee; (3) are not members of any other tribe or band of Indians; and (4) receive more than one-half of their support from such distributee or for whose support a distributee is legally liable according to the laws of the State in which he is domiciled.

(g) "Formal assignment" means any privilege of use and/or occupancy of the real property of a rancheria or reservation which is evidenced by an instrument in writing.

(h) "Informal assignment" means any privilege of use and/or occupancy of the real property of a rancheria or reservation, not based on an instrument in writing.

(i) "Organized rancheria or reservation" means any tribe, band, or community of Indians conducting its affairs pursuant to an organic document containing membership criteria approved by the Secretary.

(j) "Unorganized rancheria or reservation" means any tribe, band, or community of Indians which does not have an organic document containing membership criteria approved by the Secretary.

§ 242.3 Requests for distribution.

(a) *Unorganized rancheria or reservation.* Upon receipt of a written request from an adult Indian or Indians of an unorganized rancheria or reservation for the distribution of the assets of the rancheria or reservation, the Director shall prepare a list of Indians in the following categories:

(1) Those who have allotments on the rancheria or reservation;

(2) Those who hold formal assignments;

(3) Those who reside on the rancheria or reservation pursuant to an informal assignment;

(4) Those not in the above categories who have resided for a period of at least three consecutive years immediately preceding receipt of the request as provided for in the introductory text of this paragraph, on the rancheria or reservation not set aside for a designated group of Indians;

(5) The dependent members of the immediate families of those Indians in subparagraphs (1), (2), (3), and (4) of this paragraph.

(b) *Organized rancheria or reservation.* Upon a formal request from the official governing body of the rancheria or reservation, the Director shall prepare a list of the members of such organized group in accordance with the criteria set forth in the approved organic document of the group.

(c) *Eligibility to participate.* The adults whose names appear on a list prepared in accordance with paragraph (a) or (b) of this section shall constitute those persons eligible to vote on the issue of whether a distribution plan is to be developed. A list shall not include the name of any person who is a member of any Indian tribe, band, or community other than the one associated with the rancheria or reservation which has requested the distribution program.

(d) When the Director is satisfied that the list is complete, he shall publish it once weekly for 3 successive weeks in a local newspaper. Within 15 days after the date of the last publication of the list, anyone may protest in writing the omission of a name from the list or the inclusion of any name thereon. His written protest together with arguments to sustain it shall be presented to the Director who will render his decision, which shall be final. After all protests have been heard and have been duly disposed of, the Director shall hold an election on whether the distribution of rancheria or reservation assets shall be made. Except as otherwise provided in section 1 of the Act of August 18, 1958, as amended,[1] if a majority of the eligible voters vote for distribution, a distribution plan shall be prepared in accordance with the applicable portions of this Part 242.

§ 242.4 Plan of distribution.

(a) The plan of distribution provided for in section 2 of the Act of August 18, 1958, as amended, shall be in writing and may be prepared by:

(1) Those adult Indians whose names appear on the final list as provided for in § 242.3; or

(2) By the governing body in the case of an organized rancheria or reservation; or

(3) By the Secretary of the Interior after consultation with such Indians.

(b) The primary source of distributees shall be those persons whose names appear on the list prepared in accordance with § 242.3. Additional names may be added to the list upon the approval of a majority of the adults included on the original list referred to above: *Provided*, That no new name shall be added without the approval of the individual and of the Director. In the event of a per capita distribution of any rancheria or reservation funds, all persons whose names appear on the final list prepared pursuant to § 242.3, and all persons whose names have been added thereto, shall be entitled to participate. Any distribution plan must be approved by the Secretary before it is submitted to the adult distributees for approval. Such plan shall provide for a description of the assets and shall identify, by name and last known address, those persons to be distributees under the plan and

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[1] Sec. 1 of the Act of August 18, 1958 (72 Stat. 619), as amended makes mandatory the distribution of the land and assets of the following rancherias and reservations: Alexander Valley, Auburn, Big Sandy, Big Valley, Blue Lake, Buena Vista, Cache Creek, Chicken Ranch, Chico, Cloverdale, Cold Springs, Elk Valley, Guidiville, Graton, Greenville, Hopland, Indian Ranch, Lytton, Mark West, Middletown, Montogomery Creek, Mooretown, Nevada City, North Fork, Paskenta, Picayune, Pinoleville, Potter Valley, Quartz Valley, Redding, Redwood Valley, Robinson, Rohnerville, Ruffeys, Scotts Valley, Smith River, Strawberry Valley, Table Bluff, Table Mountain, Upper Lake, Wilton.

the dependent member of their immediate families: *Provided*, That for the purpose of this section, any person who is a member of any other tribe or band of Indians shall not be considered a dependent member of a distributee's immediate family.

§ 242.5 General notice.

When the Secretary has approved a plan for the distribution of the assets of a rancheria or reservation, notice of the contents of such plan shall be given in the following manner;

(a) A copy of the plan shall be delivered in person or mailed to the last known address of those who participated in the drafting of the plan and the distributees named in the plan.

(b) A copy of the plan shall be delivered in person or mailed to the last known address of all other persons who have indicated by a letter addressed to the Director that they claim an interest in the assets of the rancheria or reservation involved.

(c) Posting a copy of the plan in a public place on the rancheria or reservation and in the post office serving the rancheria or reservation.

(d) Publication of the general contents of the plan once weekly for three successive weeks in one or more local newspapers.

§ 242.6 Objections to plan.

Any Indian who feels that he is unfairly treated in the proposed distribution of the assets of a rancheria or reservation as set forth in a plan prepared and approved in accordance with the regulations of this Part 242 may, within thirty (30) days after the date of last publication under § 242.5(d), submit his views and arguments in writing to the Director. The Director shall act for persons who are minors or non compos mentis if he finds that such persons are unfairly treated in the proposed distribution of the assets. Such views and arguments shall be promptly forwarded by the Director for consideration by the Secretary.

§ 242.7 Referendum.

After consideration by the Secretary of all views and arguments, a copy of the plan or a revision thereof and a notice of a referendum meeting shall be sent by certified mail, return receipt requested, to each distributee. Thereafter, the Secretary shall cause a referendum to be held at a general meeting of the distributees, at the time and place set forth in the notice of the meeting. Each adult Indian distributee may indicate acceptance or rejection of the plan by depositing his or her ballot in a ballot box at the meeting place or by mailing his or her ballot to the Director, in which case the envelope shall be clearly marked to identify the rancheria or reservation referendum for which the ballot is being submitted. All ballots which are mailed must be received by the Director at least 2 days before the date set for the referendum meeting. Ballots received thereafter shall not be accepted. At the close of the meeting all ballots shall be counted and if the plan is approved by a majority vote of the adult Indian distributees, it shall be effective on the date approved. Subject to modification as provided in § 242.8 the plan shall thereupon be put into effect and its provisions carried out as expeditiously as possible, including distribution of assets as therein provided.

§ 242.8 Modification of plan.

If after approval by the Secretary and the adult distributees it is determined by an appropriate resolution approved by a majority of the adult distributees that a plan of distribution is not in conformity with the wishes of the proposed distributees or that it contemplates acts or actions determined to be unfeasible and if modification of the plan of distribution is required to correct the circumstances, such resulotion shall be submitted to the Secretary for approval. Approval of the resolution by the Secretary shall be final and the plan of distribution shall be considered modified as of the date of such approval.

§ 242.9 Beneficial interest.

Upon approval of a plan, revision, or modification thereof by the Secretary and acceptance by a majority of the adult distributees, the distributees listed in the plan, revision, or modification shall be the final list of Indians

entitled to participate in the distribution of the assets of the rancheria or reservation, and the rights or beneficial interests of each person whose name appears on this list may be inherited or bequeathed, but shall not otherwise be subject to assignment, alienation or encumbrance before the transfer by the United States of full legal title to such assets, except with the approval of the Secretary.

§ 242.10 Organized rancheria or reservation.

When a plan for the distribution of the assets of an organized rancheria or reservation has been approved and adopted at a referendum held for that purpose, the governing body of such rancheria or reservation shall cause a final financial statement to be prepared including a certificate that all obligations and debts of said rancheria or reservation have been liquidated or adjusted and that all the assets have been or are simultaneously therewith conveyed to persons, associations, corporations, or other groups authorized by law to receive them. Upon receipt of a satisfactory certificate of completion, the organization document and/or charter shall be revoked by the Secretary.

§ 242.11 Sale of unoccupied land.

Sale of any rancheria or reservation by the Secretary pursuant to the authority contained in section 5(d) of the Act of August 18, 1958, as amended, shall be conducted as nearly as practicable in the manner prescribed in that portion of Part 121 of this title which applies to the sale of individually owned trust or restricted land.

§ 242.12 Notice of termination

When the provisions of a plan have been carried out to the satisfaction of the Secretary, he shall publish in the FEDERAL REGISTER a notice declaring that the special relationship of the United States to the rancheria or reservation and to the distributees and the dependent members of their immediate families is terminated. The notice shall list the names of the distributees and the dependent members of their immediate families who are no longer entitled to any services performed by the United States for Indians because of their status as Indians, the fact that all restrictions and tax exemptions applicable to trust or restricted land or interests therein owned by them are terminated, the fact that all statutes of the United States which affect Indians because of their status as Indians shall be inapplicable to them, and that State laws shall apply to them in the same manner as they apply to other citizens.

§ 242.13 Special instructions.

To facilitate the work of the Director, the Commissioner may issue special instructions not inconsistent with the purpose of the regulations in this Part 242 and within any authority delegated to him.

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SUBCHAPTER W—MISCELLANEOUS ACTIVITIES

PART 251—LICENSED INDIAN TRADERS

Sec.
251.1 Sole power to appoint.
251.2 Presidential prohibition.
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251.5 Government employees not to trade with Indians except in certain cases.
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251.16 Trade in annuities or gratuities prohibited.
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251.24 Cash payments only to Indians.
251.25 Trade in antiquities prohibited.
251.26 Infectious plants.

AUTHORITY: Sec. 5, 19 Stat. 200, sec. 1, 31 Stat. 1066, as amended; 25 U.S.C. 261, 262, unless otherwise noted.

SOURCE: 22 FR 10670, Dec. 24 1957, unless otherwise noted.

CROSS REFERENCE: For law and order regulations on Indian reservations, see Part 11 of this chapter. For regulations pertaining to traders on Navajo, Zuni, and Hopi reservations, see Part 252 of this chapter.

§ 251.1 Sole power to appoint.

The Commissioner of Indian Affairs shall have the sole power and authority to appoint traders to the Indian tribes. Any person desiring to trade with the Indians on any reservation may, upon establishing the fact, to the satisfaction of the Commissioner of Indian Affairs, that he is a proper person to engage in such trade, be permitted to do so under such rules and regulations as the Commissioner of Indian Affairs may prescribe.

§ 251.2 Presidential prohibition.

The President is authorized, whenever in his opinion the public interest may require, to prohibit the introduction of goods, or of any particular articles, into the country belonging to any Indian tribe, and to direct that all licenses to trade with such tribe be revoked, and all applications therefor rejected. No trader shall, so long as such prohibition exists, trade with any Indians of or for said tribe.

(R.S. 2132; 25 U.S.C. 263)

§ 251.3 Forfeiture of goods.

Any person other than an Indian of the full blood who shall attempt to reside in the Indian country, or on any Indian reservation, as a trader, or to introduce goods, or to trade therein, without a license, shall forfeit all merchandise offered for sale to the Indians or found in his possession, and shall moreover be liable to a penalty of $500: *Provided*, That this section shall not apply to any person residing among or trading with the Choctaws, Cherokee, Chickasaws, Creeks, or Seminoles, commonly called the Five Civilized Tribes: *And provided further*, That no white person shall be employed as a clerk by any Indian trader, except as such trade with said Five Civilized Tribes, unless first authorized so to do by the Commissioner of Indian Affairs.

(R.S. 2133, as amended; 25 U.S.C. 264)

§ 251.5 Government employees not to trade with Indians except in certain cases.

Save as authorized by the act of June 19, 1939 [53 Stat. 840; 25 U.S.C. 68a, 87a, 441], no person employed in Indian affairs shall have any interest or concern in any trade with the Indians except for and on account of the United States; and any person offending herein shall be liable to a penalty of $5,000 and shall be removed from his office. Pending the promulgation of regulations prescribing in more detail the transactions authorized by the act of June 19, 1939, employees of the United States Government, including those in the Bureau of Indian Affairs, may be permitted to trade with Indians or Indian organizations under the conditions specified below:

(a) Employees of the United States Government, including those in the Bureau of Indian Affairs may, with the approval of the Secretary of the Interior in each case where the amount involved exceeds $500, or with the approval of the superintendent or other officer in charge, where the amount involved does not exceed $500, be permitted to purchase from any Indian or Indian organization any arts and crafts or any other product, service or commodity produced, rendered, owned, controlled or furnished by any Indian or Indian organization: *Provided*, That no employee of the United States Government shall be permitted to make any such purchases for the purpose of engaging directly or indirectly in the commercial selling, reselling, trading, or bartering of said purchases by the said employee: *And provided further*, That employees in Alaska may in each case make such purchases with the approval of the Secretary of the Interior where the amount involved exceeds $750, and with the approval of the superintendent or other officer in charge where the amount involved does not exceed $750.

(b) *United States employees, Indian blood.* Indian employees of the United States Government, of whatever degree of Indian blood, may be members in the same manner as other Indian members of the tribe not so employed and receive benefits by reason of their membership in such tribes in corporation or cooperative associations, organized by and operated for Indians. Such Indian government employees may engage in all lawful transactions with Indians, Indian tribes and such corporations or cooperative associations. None of the transactions authorized herein may be entered into by such employees for the purpose of engaging directly or indirectly in the selling, releasing, trading, bartering or passing on in any other way for profit the objects, rights, services or property thus acquired. Nothing in this section shall prevent in proper cases the disposition of any such property when such transaction cannot be considered as actually engaging in any of the businesses prohibited in this section. All transactions authorized herein to be valid must be approved by the Secretary of the Interior.

(c) *Leases or sales of restricted Indian land.* Leases or sales of trust or restricted Indian land to or from Indian employees of the U.S. Government must be made on sealed bids unless the Commissioner of Indian Affairs waives this requirement on the basis of a full report showing (1) the need for the transaction, (2) the benefits accruing to both parties, and (3) that the consideration for the proposed transaction shall be not less than the appraised value of the land or leasehold interest unless the Indian employee qualifies and is intending a transaction in accordance with § 121.18 (b) and (c) of this chapter § 131.5(b) (1), (2), and (3) of this chapter. An affidavit as follows shall accompany each proposed land transaction:

I, (Name) (Title), swear (or affirm) that I have not exercised any undue influence nor used any special knowledge received by reason of my office in obtaining the (grantor's, purchaser's, vendor's) consent to the instant transaction.

(53 Stat. 840; 25 U.S.C. 68a, 87a, 441)

[22 FR 10670, Dec. 24, 1957, as amended at 37 FR 9628, May 13, 1972; 38 FR 25987, Sept. 17, 1973]

§ 251.6 Small purchases.

The purchase in small quantities for home use or consumption by Government employees or others, of blankets, baskets, etc., and articles of subsistence offered for sale by Indians, is held not to constitute trading with Indians within the meaning of section 2078 of the Revised Statutes.

(R.S. 2078; 25 U.S.C. 68)

§ 251.8 [Reserved]

§ 251.9 Application for license.

(a) Application for license must be made in writing on Form 5-052, setting forth the full name and residence of the applicant; if a firm, the firm name and the name of each member thereof; the place where it is proposed to carry on the trade; the capital to be invested; the names of the clerks to be employed; and the business experience of the applicant. The application must be forwarded through the Superintend-

ent to the Commissioner of Indian Affairs, accompanied by two satisfactory testimonials on Form 2-077 as to the character of the applicant and his employees and their fitness to be in the Indian country, and by an affidavit of the Superintendent on Form 5-053 that neither he nor any person for him has any interest, direct or indirect, present or prospective, in the proposed business or the profits arising therefrom, and that no arrangement for any benefit to himself or to any other person on his behalf is contemplated in case the license is granted. Licensed traders will be held responsible for the conduct of their employees.

(b) Itinerant peddlers or purveyors of foodstuffs and other merchandise shall be considered as traders and shall obtain a license or permit from the Superintendent setting forth the class of trade or peddling to be carried on, furnishing such character or credit references, or both, as may be required by the Superintendent. The period of the license for such itinerant peddlers shall be determined by the Superintendent.

(c) When a license or permit to trade is issued under the regulations in this Part 251, a fee of $5.00, payable when the license is issued, shall be levied against the licensee.

[30 FR 8267, June 29, 1965]

§ 251.11 License period.

Licenses to trade shall not be issued unless the proposed licensee has a right to the use of the land on which the business is to be conducted. The license period shall correspond to the period of the lease or permit held by the licensee on restricted Indian land, except that where the proposed licensee is the owner or beneficial owner or holds a use right to the land on which the business is to be conducted, the license period shall be fixed by the Commissioner of Indian Affairs or his authorized representative, but in no case shall the license period exceed 25 years.

[30 FR 8268, June 29, 1965]

§ 251.12 License renewal.

Application for renewal of license must be made to the Commissioner of Indian Affairs on Form 5-054, through the superintendent, at least 30 days prior to the expiration of the existing license, and the superintendent must report as to the record the applicant has made as a trader and his fitness to continue as such under a new license.

§ 251.13 Power to close unlicensed stores.

If persons carry on trade within a reservation with the Indians without a license, or continue to trade after expiration of the license without applying for renewal, the superintendent will immediately report the facts in the case to the Commissioner of Indian Affairs, who may, if necessary, direct the superintendent to close the stores of such traders.

§ 251.14 Trade limited to specified premises.

No trade with Indians is permitted at any other place than that specified in the license. Licenses to not cover branch stores. A separate license and bond must be furnished for each such store. The business of a licensed trader must be managed by the bonded principal, who must habitually reside upon the reservation, and not by an unbonded subordinate.

§ 251.15 License applicable for trading only by original licensee.

No trader will be allowed to lease, sublet, rent, or sell any of the buildings which he occupies, for any purpose to any other person or concern, without the approval of the Commissioner of Indian Affairs. A license to trade with Indians does not confer upon the trader any right or privileges in respect to the herding or raising of livestock upon the reservation. The use of reservation lands, whether tribal or allotted, for such purposes can be obtained by a trader only upon the terms and under the restrictions which apply to other persons. His license gives him no advantage over others in this respect.

§ 251.16 Trade in annuities or gratuities prohibited.

Traders are forbidden to buy, trade for, or have in their possession any annuity or other goods of any description which have been purchased or

furnished by the Government for the use or welfare of the Indians. Livestock or their increase purchased by the Government and in possession or control of the Indians may not be purchased by any trader, not a member of the tribe to which the owners or possessors of the cattle belong, except with the written consent of the agent of said tribe.

§ 251.17 Tobacco sales to minors.

No trader shall sell tobacco, cigars, or cigarettes to any Indian under 18 years of age.

§ 251.18 Intoxicating liquors.

No trader shall use or permit to be used his premises for any unlawful conduct or purpose whatsoever. No trader shall use of permit to be used any part of his premises for the manufacture, sale, gift, transportation, drinking or storage of intoxicating liquors or beverages in violation of existing laws relating thereto. Violation of this section will subject the trader to criminal prosecution, revocation of license and such other action as may be necessary.

§ 251.19 Drugs.

Traders shall not keep for sale, or sell, give away, or use any opium, chloral, cocaine, peyote or mescal bean, hashish or Indian hemp or marihuana, or any compound containing either ingredient, and for violation hereof the trader's license shall be revoked.

§ 251.21 Gambling.

Gambling, by dice, cards, or in any way whatever, is strictly prohibited in any licensed trader's store or on the premises.

§ 251.22 Inspection of traders' prices.

It is the duty of the superintendent to see that the prices charged by licensed traders are fair and reasonable. To this end the traders shall on request submit to the superintendent or inspecting officials the original invoice, showing cost, together with a statement of transportation charges, retail price of articles sold by them, the amount of Indian accounts carried on their books, the total annual sales, the value of buildings, livestock owned on reservation, the number of employees, and any other business information such officials may desire. The quality of all articles kept on sale must be good and merchantable.

§ 251.23 Credit at trader's risk.

Credit given Indians will be at the trader's own risk, as no assistance will be given by Government officials in the collection of debts against Indians. Traders shall not accept pawns or pledges of personal property by Indians to obtain credit or loans.

§ 251.24 Cash payments only to Indians.

Traders must not pay Indians in tokens, tickets, store orders, or anything else of that character. Payment must be made in money, or in credit if the Indian is indebted to the trader.

§ 251.25 Trade in antiquities prohibited.

Traders shall not deal in objects of antiquity removed from any historic or prehistoric ruin or monument on land owned or controlled by the United States.

CROSS REFERENCE: For additional regulations pertaining to preservation of antiquities, see Part 132 of this chapter. For regulations of the Bureau of Land Management regarding antiquities, see 43 CFR Part 3.

§ 251.26 Infectious plants.

Traders shall not introduce into, sell, or spread within Indian reservations any plant, plant product, seed, or any type of vegetation, which is infested, or infected or which might act as a carrier of any pests of infectious, transmissible, or contagious diseases, as determined by the laws and regulations of the State for plant quarantine and pest control. For the purpose of enforcement of this provision State officers may enter Indian reservations, with the consent of the superintendent, to inspect the premises of such traders and otherwise to execute such State laws and regulations.

PART 252—BUSINESS PRACTICES ON THE NAVAJO, HOPI AND ZUNI RESERVATIONS

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AUTHORITY: 5 U.S.C. 301, secs. 463, 465 revised statutes (25 U.S.C. 2 and 9) 230 DM 2.

SOURCE: 40 FR 39835, Aug. 29, 1975, unless otherwise noted.

Subpart A—Interpretation and Construction Guides

§ 252.1 Purpose.

The purpose of the regulations of this Part is to prescribe rules for the regulation of reservation businesses for the protection of Indian consumers on the Navajo, Hopi and Zuni Reservations as required by 25 U.S.C. 261, 262, 263, and 264.

§ 252.2 Scope.

The regulations of this part apply to all persons who engage in retail business on the Navajo Reservation, to all nonmembers of the Hopi Tribe who

engage in retail business on the Hopi Reservation and to all nonmembers of the Zuni Tribe who engage in retail business on the Zuni Reservation, except as otherwise provided in specific sections of this part. These regulations do not apply to a business that is wholly owned and operated by the Hopi or Zuni Tribes or by a member of those tribes on the owner's reservation. These regulations do not apply to a business that is wholly owned and operated by the Navajo Tribe and is located on the Navajo Reservation.

[41 FR 13937, Apr. 1, 1976]

§ 252.3 Definitions.

For the purposes of this Part—

(a) "Annual percentage rate" means the annual percentage rate of finance charge determined in accordance with 12 CFR 226.5, which defines annual percentage rates.

(b) "Consumer credit transaction" means a grant of credit or a loan that is made by a person regularly engaged in the business of making loans or granting credit primarily for a personal, family, household, or agricultural purpose.

(c) "Draft" means a writing that is a direction to pay that:

(1) Identifies the person to pay with reasonable certainty;

(2) Is signed by the drawer;

(3) Contains an unconditional order to pay a sum certain in money and no other promise, order, obligation or power given by the drawer;

(4) Is payable on demand or at a definite time; and

(5) Is payable to order.

(d) "Finance charge" means the cost of credit determined in accordance with 12 CFR 226.4, which defines "finance charge".

(e) "Firm" means a corporation or a partnership.

(f) "Gross receipts" include the following:

(1) All cash received from the conduct and operation of the licensee's business at the premises described in the application for license.

(2) Receipts from both wholesale and retail transactions.

(3) Receipts resulting from transactions concluded off the reservation that originate from the conduct and operation of the licensee's business on the reservation.

(4) The market value of all property taken in trade on the date when received and either held by the licensee for purposes other than resale or credited on any account in payment for merchandise.

(5) Proceeds from the sale of any goods bought from Indians regardless of where the sale takes place.

(6) Finance charge received on loans, but not the return of principal.

(g) "Open end credit" means consumer credit transactions made on an account by a plan under which (1) the creditor may permit the customer to make purchases or obtain loans, from time to time, directly from the creditor or indirectly by use of a credit card, check, or other device, as the plan may provide; (2) the customer has the privilege of paying the balance in full or in installments; and (3) a finance charge may be computed by the creditor from time to time on an outstanding unpaid balance.

(h) "Pawnbroker" means a person whose business includes lending money secured by personal property deposited with the lender.

(i) "Peddler" means a person who offers goods for sale within the exterior boundaries of the Hopi, Navajo or Zuni Reservations, but does not do business from a fixed location or site on any of those reservations.

(j) "Person" includes a natural person, a corporation, trust, estate, partnership, cooperative or association.

(k) "Replacement value" means the present cost to the owner of replacing an item with one having the same quality and usefulness.

(l) "Reservation business" means a person that engages at a fixed location or site within the exterior boundaries of the Navajo, Hopi or Zuni Reservations in the sale or purchase of goods or services or in consumer credit transactions with Indians and is not a bank, saving bank, trust company, savings or building and loan association or credit union operating under the laws of the United States or the laws of New Mexico, Arizona or Utah, a business on the Hopi Reservation that is wholly owned and operated by members of

the Hopi Tribe, or a business on the Zuni Reservation that is wholly owned and operated by members of the Zuni Tribe.

§ 252.4 Interpretation and construction.

(a) "Area Director" refers to the Area Director of the Bureau of Indian Affairs or the Administrator of the Joint Use Area of the Bureau of Indian Affairs who has jurisdiction over the land on which a person does business or intends to do business with Indians.

(b) "Commissioner" refers to the Commissioner of Indian Affairs or a person to whom the Commissioner of Indian Affairs has delegated authority under this Part or under 25 U.S.C. 261, 262, 263, or 264.

(c) "Superintendent" refers to the Superintendent of the Bureau of Indian Affairs who has jurisdiction over the land on which a person does business or intends to do business with Indians.

(d) "Tribe" refers to the tribe that has jurisdiction over the land on which a person does business or intends to do business with Indians.

Subpart B—Licensing Requirements and Procedures

§ 252.5 Reservation business license required.

(a) No person may own or lease a reservation business without a license issued under the provisions of this subpart.

(b) The applicant shall apply in writing on a form provided by the Commissioner setting forth the following:

(1) The full name and residence of the applicant.

(2) Three (3) responsible references.

(3) The firm name and the name of each member of the board of directors if the applicant is a firm.

(4) Satisfactory evidence as to the character, experience and business ability of the applicant and the employees of the applicant.

(5) Satisfactory evidence of the general fitness of the applicant and employees of the applicant to reside on the Indian reservation.

(c) Upon the request of the Commissioner, the applicant shall furnish the following:

(1) The capital invested or to be invested and, of this, the amount of capital owned and the amount borrowed or to be borrowed.

(2) The name of the lender of any borrowed capital, the date due, the rate of interest to be paid, and the names of any endorsers and security.

(3) A copy of any contract or trade agreement whether oral or written with creditors or financing individuals or institutions, including any stipulations whereby financing fees are to be paid.

(d) Information that if released might adversely affect the competitive position of the applicant shall remain confidential.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976]

§ 252.6 Approval or denial of license application.

(a) The Commissioner shall approve or deny each license application and notify the applicant no later than thirty (30) days after receipt of a completed application.

(b) No application is complete until any clearance or tribal council approval required by tribal or Federal regulations has been obtained.

(c) The Commissioner may not deny a license to an applicant for the purpose of limiting competition.

(d) If the application is approved the license shall be issued on a form provided by the Commissioner.

(e) If the Commissioner denies the license application the applicant may appeal under the provisions of Part 2 of this Title no later than thirty (30) days after the date on which notice of denial of the application was sent.

§ 252.7 Bond requirement for a reservation business.

(a) An applicant for a license or renewal of a license to operate a reservation business shall at the time the application is submitted furnish a bond on a form provided by the Commissioner in the name of the applicant in the amount of ten thousand dollars ($10,000) or such larger sum as the Commissioner may designate, with two

(2) on more sureties approved by the Commissioner or with a guaranty company qualified under the Act of August 13, 1894 (28 Stat. 279; 6 U.S.C. 6-13). The bond shall be for the same period covered by the license. No licensee may trade without a bond. Except as provided in paragraph (d) of this section, no surety may be released from liability until the license expires.

(b) The bond shall be in favor of the United States for the benefit of the United States and any customer of the licensee who recovers a judgment for damages resulting from violation of any law or regulation affecting or relating to reservation businesses. Any customer who recovers such a judgment may bring suit on the bond in his or her own name. The bond shall be conditioned on payment by the licensee of all judgments for damages resulting from violations of the regulations of this Part.

(c) Any surety for a reservation business on the Hopi or Zuni Reservation shall agree in writing to submit itself voluntarily to the jurisdiction of the tribal court for the purpose of adjudicating any claim arising under the bond.

(d) Any surety on the bond of a licensed reservation business may be relieved from liabilities by complying with the provisions of § 252.57 of this Title.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 22937, June 8, 1976]

§ 252.8 License period for reservation businesses.

A license to operate a reservation business may not be issued unless the applicant has a right to use the land on which the business is to be conducted. The license period shall correspond to the period of the lease held by the licensee. The license period in no event may exceed twenty-five (25) years.

§ 252.9 Application for license renewal.

(a) An applicant for renewal of the license to trade shall file an application on a form provided by the Commissioner with the Area Director not less than three (3) months prior to the expiration of the existing license. The Area Director shall report in writing to the Commissioner on the record the applicant has made as a reservation business owner and the applicant's present fitness to reside on the Indian reservation.

(b) The Commissioner may issue a temporary permit for three (3) months pending consideration of application for license renewal.

(c) Prior to expiration of the existing license or, if issued, the temporary permit, the Commissioner shall approve or deny the application for license renewal and notify the applicant.

(d) No license may be renewed until any clearance or tribal council approval required by tribal or other federal regulations has been obtained.

(e) If the Commissioner denies the application for renewal, the applicant may appeal under the provisions of Part 2 of this Title.

§ 252.10 License fees for reservation businesses.

(a) Prior to the issuance of an initial license, each licensee who is not a member of the Navajo tribe shall pay the following amount:

(1) If the license is issued before July 1, the licensee shall pay fifty dollars ($50).

(2) If the license is issued on or after July 1, the licensee shall pay twenty-five dollars ($25).

(b) Each licensed business owner who is not a member of the Navajo tribe shall pay on or before January 10 of each year an annual license fee determined as follows based on the licensee's most recent annual report:

(1) If the licensee's gross receipts are less than one hundred thousand dollars ($100,000) for the year or the licensee has not yet been required to file its first annual report, the license fee is fifty dollars ($50).

(2) If the licensee's gross receipts for the year are at least one hundred thousand dollars ($100,000) but not more than four hundred and ninety-nine thousand nine hundred and ninety-nine dollars ($499,999) the fee is one hundred dollars ($100).

(3) If the licensee's gross receipts for the year are at least five hundred thousand dollars ($500,000) but not more than seven hundred and forty-

nine thousand nine hundred and ninety-nine dollars ($749,999), the fee is two hundred dollars ($200).

(4) If the licensee's gross receipts for the year are seven hundred fifty thousand dollars ($750,000) or more, the fee is three hundred dollars ($300).

(c) The Navajo Area Director shall determine the annual license fee payable by licensees who are enrolled members of the Navajo Tribe. The license fee for an enrolled member of the Navajo Tribe may not be less than twenty percent (20%) nor greater than one hundred percent (100 percent) of the amount the licensee would be required to pay if the licensee were not a tribal member.

(d) All fees are payable to the Area Director and shall be deposited to the credit of a subaccount of the account "Indian Monies, Proceeds of Labor" and shall be expended in the enforcement of the regulations of the Part.

§ 252.11 Tribal fees, taxes and enforcement.

(a) The regulations in this Part do not preclude the Hopi, Navajo, or Zuni tribal councils from assessing and collecting such fees or taxes as they may deem appropriate from reservation businesses.

(b) Nothing in the regulations of this Part may be construed to preclude tribal enforcement of these regulations or consistent tribal ordinances.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976]

§ 252.12 Peddler's permits.

(a) Except as provided in paragraph (b) of this section, no peddler may offer goods for sale within the exterior boundaries of the Hopi, Navajo, or Zuni reservations without a peddler's permit. The permit shall state on its face the class of goods that may be offered for sale. No peddler may offer for sale any class of goods other than those listed on the face of the permit.

(b) No peddler who is an enrolled member of a federally recognized Indian tribe is required to obtain a peddler's permit for offering to sell the following items:

(1) Coal and wood for non-commercial use,

(2) Homegrown fresh products,

(3) Meat products raised locally by the peddler, or

(4) Arts and crafts made by the peddler or the peddler's family.

(c) The applicant shall apply for a permit in writing on a form provided by the Commissioner.

(d) Peddlers shall pay such fee and post such surety bond on a form provided by the Commissioner as the Commissioner requires. The surety bond required may not be less than five hundred dollars ($500) nor more than ten thousand dollars ($10,000).

(e) Any surety on the bond of a peddler may be relieved of liability by complying with the provisions of § 252.57.

(25 U.S.C. 261 et seq.)

[43 FR 27826, June 27, 1978]

§ 252.13 Amusement company licenses.

(a) No person may operate a portable dance pavilion, mechanical amusement device such as a ferris wheel or carousel, or commercial games of skill within the exterior boundaries of the Navajo, Hopi, or Zuni Reservations without a license from the Commissioner.

(b) The licensee shall pay such fee as the Commissioner requires. The fee shall be not less than five dollars ($5) nor more than twenty-five dollars ($25) per unit.

(c) The licensee shall post a surety bond on a form provided by the Commissioner in an amount not exceeding ten thousand dollars ($10,000) and a personal injury and property damage liability bond of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000) as may be required by the Commissioner.

(d) The provisions of this section do not apply to amusement companies where the contract between the tribe and the amusement company provides for the payment of a fee to the tribe and for the protection of the public against personal injury and property damage by bond in the amounts specified in paragraph (c) of this section.

(e) Any surety on a bond under this section may be relieved of liability by complying with the provisions of § 252.57.

§ 252.14 Trade in livestock restricted.

(a) No person other than an enrolled member of the tribe or any association, partnership, corporation or business entity wholly owned by enrolled members of the tribe may purchase livestock from tribal members without a special permit issued by the Commissioner.

(b) The Commissioner shall issue a permit to each applicant who establishes to the Commissioner's satisfaction that the applicant is a fit person to engage in the purchase of livestock and who posts a bond on a form provided by the Commissioner in the amount of ten thousand dollars ($10,000). This paragraph does not require a person who has posted a bond of ten thousand dollars ($10,000) or more under other provisions of this Part to post an additional bond to obtain a permit under this section.

(c) Any surety on a bond under this section may be relieved of liability by complying with the provisions of § 252.57.

(d) The provisions of this section do not apply to purchases of livestock made at an organized public auction.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 22937, June 8, 1976]

§ 252.15 Consent to jurisdiction of Hopi and Zuni tribal courts.

As a condition to doing business on the Hopi or the Zuni Reservation each applicant for license under this Part shall, in accordance with the constitutions of those tribes, voluntarily submit the applicant and the applicant's employees or agents to the jurisdiction of the tribal court for the purpose of the adjudication of any dispute, claim or obligation arising under tribal ordinance relating to commerce carried out by the licensee.

Subpart C—General Business Practices

§ 252.16 Price marking.

The price of each article offered for sale shall be marked on the article, its containers or in any other manner that is plain and visible to the customer and that affords the customer a reasonable opportunity to learn the price of the article prior to purchase.

§ 252.17 Health and sanitation requirements.

(a) Each licensee shall keep both the premises and the place of business in a clean and sanitary condition at all times and shall avoid exposure of foodstuffs to contamination. No licensee may offer for sale any goods that are banned for health or sanitation reasons from retail sale by any Federal agency or by the tribe or, where not in conflict with the tribal regulations, by the State or by any State agency. No licensee may knowingly offer for sale any food that is contaminated.

(b) All weights and measure shall conform to standards set by the National Bureau of Standards and to standards, if any, set by the tribe and, if not in conflict with tribal regulations, to the standards set by the State.

(c) If training in foodhandling is available from the Indian Health Service, each person working in a reservation business shall complete the foodhandler training offered by the Indian Health Service before handling any food sold by a reservation business.

(d) Any person whom the Service Unit Director of the Indian Health Service determines is infected with or is a carrier of any communicable disease in a stage likely to be communicable to persons exposed as a result of the infected employee's normal duties as a foodhandler may not be employed by a reservation business.

(e) Each business shall comply with all Federal health regulations and with all tribal health regulations that are consistent with Federal regulations. Each business shall comply with State health regulations that are consistent with tribal and Federal health regulations.

(f) Except as otherwise provided herein, nothing in this section may be construed as a grant of enforcement powers to any agency of a State or its subdivisions.

(g) It is the duty of the health officers of the Indian Health Service to make periodic inspections, recommend improvements, and report thereon to the Commissioner.

§ 252.18 Availability of employee authorized to transact business.

Each licensee shall provide during normal business hours an employee authorized in writing to engage in all business transactions that the licensee normally offers to customers.

§ 252.19 Check cashing.

(a) A reservation business may give a fully negotiable check in addition to United States currency when cashing a draft, check or money order. A reservation business may not give scrip, credit or other substitute for United States currency when cashing a draft, check or money order.

(b) A reservation business owner or employee may advise a customer cashing checks, money orders or drafts of the amount due on the customer's credit accounts, pawn accounts or any other obligation the customer owes to the business, but in no event may the owner or employee withhold the proceeds of the check, money order or draft from the customer on the basis of existing credit obligations.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976]

§ 252.20 Payment for purchase of Indian goods or services.

(a) A reservation business shall pay for the purchase of Indian goods or services with cash or a fully negotiable check. A reservation business may not pay for Indian goods or services with trade slips or future credit. In any transaction involving the purchase of Indian goods on the Navajo Reservation, the reservation business shall furnish a bill of sale indicating the name of the seller, a description of the goods, the amount paid for the goods, the date of sale, and the signature of both parties and shall retain a copy of the bill of sales in its business records.

(b) A reservation business owner or employee may advise a customer selling Indian goods or services of the amount due on the customer's credit accounts, pawn accounts or any other obligation the customer owes to the business, but in no event may the owner or employee withhold the proceeds of the sale from the customer on the basis of existing credit obligations.

§ 252.21 Trade confined to premises.

The licensee shall confine all trade on the reservation to the premises specified in the license, except, where permitted under § 252.14, the buying and selling of livestock and livestock products.

§ 252.22 Subleasing prohibited.

No licensee may lease, sublet, rent, or sell any building that the licensee occupies for any purpose to any person without the approval of the Commissioner and the consent of the tribe.

§ 252.23 Posted statement of ownership.

The licensee of a reservation business shall display in a prominent place a notice that is legible to customers stating the form of the business entity, the names and addresses of all other reservation businesses owned in whole or in part by the business entity, and if the licensee is not a corporation, the names and addresses of the owner or owners of the business. If the licensee is a corporation the notice shall list the names and addresses of the members of the Board of Directors.

§ 252.24 Attendance at semi-annual meetings.

Upon the request of a tribal official designated by the governing body, each licensee shall attend a semi-annual public meeting of a tribal governing body to respond to customer inquiries.

§ 252.25 Withholding of mail prohibited.

No owner or employee of a reservation business may open, withhold, or otherwise delay the delivery of mail.

§ 252.26 Trade in antiquities prohibited.

No licensee may knowingly buy, sell, rent or lease any artifact created before 1930 that was removed from an historic ruin or monument.

§ 252.27 Trade in imitation Indian crafts prohibited.

No person may introduce or possess for disposition or sale within the exterior boundaries of the Hopi, Navajo or Zuni Reservations any object that is

represented to be an Indian handicraft unless the object was produced by an Indian or Indians with the help of only such devices as allow the manual skill of the maker to condition the shape and design of each individual's product.

§ 252.28 Gambling prohibited.

No licensee may permit any person to gamble by dice, cards, or in any way whatever, including the use of any mechanical device, on the premises of any licensed business.

§ 252.29 Political contributions restricted.

No reservation business owner who is ineligible to vote in a Navajo tribal election may grant or donate any money or goods to any candidate for election to Navajo tribal office.

§ 252.30 Retaliation prohibited.

No licensee may refuse service to any customer for the purpose of retaliating against that customer for enforcing or attempting to enforce the regulations of this Part.

§ 252.31 Trade by Indian Affairs employees restricted.

(a) Except as authorized in this section, no person employed by the U.S. Government in Indian Affairs may have any interest in any trade with an Indian or an Indian organization. Employees of the U.S. Government may trade with an Indian or Indian organization for any purpose other than to engage in a profit-making activity under the following conditions:

(1) Where the amount involved is $500 or less a U.S. Government employee may purchase goods or services from an Indian or Indian organization.

(2) Where the amount involved is greater than $500 a U.S. Government employee may, with the approval of the Secretary of the Interior, purchase goods or services from any Indian or Indian organization.

(b) Lease or sale of home sites or allotments on trust or restricted Indian land to or from Indian employees of the U.S. Government shall be made on sealed bids, unless the Commissioner waives this requirement on the basis of a report showing (1) the need for the transaction, (2) the benefits accruing to both parties, and (3) that the consideration for the proposed transaction is not less than the appraised value of the land or leasehold interest unless the Indian employee qualifies and is intending a transaction in accordance with § 121.5 (b) and (c) of this Chapter of § 131.5(b)(1), (2) and (3) of this Chapter. An affidavit, as follows, shall accompany each proposed land transaction:

I, ———————————————————

(Name)

———————————————————

(Title)

swear (or affirm) that I have not excercised any undue influence nor used any special knowledge received by reason of my office in obtaining the (grantor's, purchaser's, vendor's) consent to the instant transaction.

(c) This section does not prohibit any reservation business from contracting with the Federal Government to provide postal services to Indian communities in which Government postal service is unavailable.

(d) Nothing in this section prohibits an Indian employee from receiving benefits by reason of membership in a tribe or corporation or cooperative association organized by and operated for Indians.

(e) U.S. Government employees who violate this section are liable to a penalty of five thousand dollars ($5,000) and shall be removed from office, see 25 U.S.C. 68.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976]

Subpart D—Pawnbroker Practices

§ 252.32 Reservation pawnbroker license required.

(a) No person may accept pawns or pledges of personal property as security for monies or accounts due by an Indian within the exterior boundaries of the Navajo, Hopi or Zuni Reservations unless such person is an agent of a bank, saving bank, trust company, savings or building and loan association, or credit union operating under the laws of the United States or the laws of New Mexico, Arizona, or Utah or unless such person—

(1) Holds a valid license to operate a reservation business,

(2) Holds a valid reservation pawnbroker license, and

(3) Posts a bond on a form provided by the commissioner in the name of the licensee in the amount of twenty-five thousand dollars ($25,000) or such larger sum as may be designated by the Commissioner with two (2) or more sureties approved by the Commissioner or with a guaranty company qualified under the Act of August 13, 1894 (28 Stat. 279; 6 U.S.C. 6-13).

(b) An applicant for a reservation pawnbroker license shall apply in writing on a form provided by the Commissioner.

(c) The bond required by paragraph (a) of this section shall be in favor of the United States for the benefits of the customers of the licensee and shall specifically indemnify all customers who have recovered judgment against the licensee for destroyed, lost, misplaced or misappropriated pawn or other property. Any customer recovering such a judgment may bring suit on the bond in his or her own name. The bond shall be for the same period as the license.

(d) Any surety on a bond under this section may be relieved of liability by complying with the provisions of § 252.57.

(e) No person may accept pawns or pledges of personal property as security for monies or accounts due by an Indian after the effective date of a tribal ordinance banning the acceptance of pawn on the reservation.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976; 41 FR 22937, June 8, 1976]

§ 252.33 Fees for pawnbroker license.

(a) Prior to the issuance of an initial pawnbroker license, each licensee who is not a member of the Navajo Tribe shall pay the following amount:

(1) If the license is issued before July 1, the licensee shall pay two hundred dollars ($200).

(2) If the license is issued on or after July 1, the licensee shall pay one hundred dollars ($100).

(b) Each licensed pawnbroker who is not a member of the Navajo Tribe shall pay on or before January 10 of each year an annual license fee of two hundred dollars ($200).

(c) The Area Director shall determine the annual license fee payable by licensees who are enrolled members of the Navajo Tribe. The license fee for a member of the Navajo Tribe may not be less than twenty percent (20 percent) nor greater than one hundred percent (100 percent) of the amount the licensee would be required to pay if the licensee were not tribal member.

(d) All fees are payable to the Area Director and shall be deposited to the credit of a subaccount of the account "Indian Monies, Proceeds of Labor" and shall be expended exclusively for the enforcement of the regulations of this Part.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976]

§ 252.34 Pawnbroker records.

Each pawnbroker shall keep a written record of the following information:

(a) Transaction number.

(b) Name of pledgor.

(c) Address of pledgor.

(d) Census number or social security number of pledgor.

(e) Date of transaction.

(f) Replacement value of pawn.

(g) Description of pawned item.

(h) Amount loaned in cash.

(i) Amount loaned as credit.

(j) Finance charge.

(k) Amount financed.

(l) Date and amount of payments made by pledgor.

(m) Date notice of default sent to pledgor.

(n) Date pawned item sold.

(o) Name and address of purchaser.

(p) Amount received upon sale.

(q) Amount of any surplus returned to the pledgor.

(r) Such other information as the Commissioner may require.

§ 252.35 Pawnbroker disclosure requirements.

In all transactions in which pawn is taken the lender shall give the borrower a written ticket or receipt disclosing the following information to the extent applicable:

(a) Clear identification of the property pledged.

(b) The date of the transaction.
(c) Amount of the loan.
(d) Name and social security or census number of the pledgor.
(e) Replacement value of the pawn as agreed upon by the pledgor and pledgee.
(f) Date on which loan is due.
(g) The amount, expressed as a dollar amount, of any finance charges.
(h) The finance charges expressed as an annual percentage rate and computed in accordance with the provisions of 12 CFR 226.5(b).
(i) The amount, or method of computing the amount, of any charges to be assessed after the date the loan is due.
(j) A statement of the conditions of default and the pledgor's rights upon default, as defined by this Part.
(k) Identification of the method of computing any unearned portion of the finance charges in the event of prepayment of the obligation.

§ 252.36 Maximum finance charges on pawn transactions.

No pawnbroker may impose an annual finance charge greater than twenty-four percent (24 percent) of the unpaid balance for the period of the loan nor assess late charges or delinquency charges on any loan.

§ 252.37 Prepayment.

(a) Subject to the provisions of paragraph (b) of this section, the pledgor may prepay in full or in any part the unpaid balance of a loan at any time without penalty.
(b) When a loan is prepaid the lender may collect the earned portion of the finance charge or may charge an administrative fee not to exceed ten percent (10 percent) of the unearned finance charge or two dollars ($2) whichever is greater.

§ 252.38 Pawn loans, period, notice and sale.

(a) The proceeds of all loans secured by pawn and for which a finance charge is imposed shall be paid only in cash or with a fully negotiable check.
(b) The period of all such loans shall be no less than twelve (12) months, subject to the provisions of paragraph (c).
(c) Thirty (30) days prior to the end of the loan period the pledgee may make a declaration of intention to proceed with sale of the pawned item by sending notice of intent to the pledgor.
(d) the notice required in paragraph (c) of this section shall be sent to the pledgor and proof of delivery obtained and shall contain a description of the item pawned, a statement of the principal and finance charge owed, a statement of the intention to sell, the date of the sale, and the procedure for redemption.
(e) Nothing in this section requires the business owner to proceed with notice and sale if the business owner desires to hold the pawn for a period longer than the loan period stated in the original agreement.
(f) Unless notice is given under paragraph (c) of this section, or the loan is refinanced under the provisions of § 252.41, no finance charge may be imposed for the time the loan remains unpaid after the end of the loan period stated on the pawn ticket.

§ 252.39 Sale and redemption of pawn.

(a) If the retention period has expired and notice as required under § 252.38 of this Part has been sent and received, the pledgee may proceed with the sale of the pawn.
(b) The pawn shall be sold no sooner than thirty (30) days but no later than twelve (12) months after notice of intent to sell has been given. The sale shall be a public sale, with notice of the time, place, and manner to be given in a tribal newspaper of general circulation not less than fourteen (14) days prior to the sale, or in the absence of such a newspaper, in a commercially reasonable manner. The sale itself shall also be conducted in a commercially reasonable manner.
(c) A pledgor may redeem pawn which has been put up for sale at any time before the day it is to be sold by tendering to the pledgee the face amount of the loan, plus the finance charge assessed on the original loan. The pledgee may also collect an additional charge covering the period between the date due and the date of redemption, provided that the rate of

charge does not exceed the finance charge on the original loan.

(d) The pledgee may buy at the pledgee's own sale if the collateral is of a type customarily sold in a recognized market or which is the subject of widely distributed standard price quotations.

(e) Pawn held for more than twelve (12) months after notice of intent to sell has been given may not be sold, but the pledgor may redeem the pawn at any time by tendering to the pledgee the face amount of the loan, plus the finance charge that accrued before the end of the sale period provided in paragraph (b) of this section.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976]

§ 252.40 Proceeds of sale.

(a) The following items shall be deducted from the proceeds of the sale of pawned items in the following order of priority:

(1) The expense of advertising and conducting the sale, not to exceed ten percent (10%) of the amount loaned.

(2) The principal amount of the loan, plus any accrued finance charges.

(3) The finance charge calculated at the annual percentage rate of the original loan on the unpaid balance of the loan for the period from the date of default to the date of sale.

(b) Within ten (10) days after the sale of the pledge under this section, the pledgee shall send a notice to the pledgor informing the pledgor of the date of the sale, the proceeds of the sale, the allowable costs of the sale, any additional finance charges, and the amount of any surplus realized. The pledgee shall obtain proof that the notice was delivered.

(c) Any proceeds of the sale remaining after the deductions authorized in paragraph (a) of this section are deemed to be "surplus" and shall be paid over to the pledgor or the pledgor's estate in U.S. currency.

(d) The sale of pledged goods and the application of the proceeds in accordance with this section extinguishes all rights of action of the pledgee for any unpaid principal or finance charge on the original loan.

§ 252.41 Refinancing transaction.

(a) Any pawn agreement may be refinanced, either with or without an increase in the principal amount of the loan, prior to or following the date of expiration of the original period of the loan upon agreement between the parties.

(b) Such refinancing constitutes a new transaction for purposes of all disclosure and record keeping requirements of this Part and requires the issuance of a new ticket or receipt.

(c) The rate of the additional finance charge imposed as part of the refinancing agreement may not exceed the maximum rate imposed by § 252.36.

(d) The total finance charges in a refinancing agreement may not exceed the sum of the following amounts:

(1) The finance charge that the pledgor would have been required to pay upon prepayment on the date of refinancing under § 252.37 of this Part, except that, for the purpose of computing this amount, no minimum finance charge or administrative fee may be included, and

(2) Such additional finance charge as is permissible on the balance of the loan over the remaining period of the loan as extended.

(e) The default and sale procedures of this Part apply to a refinanced pawn transaction in the same manner as they apply to an original pawn transaction.

§ 252.42 Lost pawn receipts or tickets.

(a) Redemption may not be denied on the sole ground that the pledgor is unable to produce a receipt or pawn ticket, provided the pledgor gives a reasonable description of the pawned item or makes an actual identification of the item. The pledgee may require the pledgor to sign a receipt for the redeemed pawn. No person other than the pledgor may redeem pawn without a ticket.

(b) No additional charges may be imposed for the loss of a pawn receipt or ticket.

§ 252.43 Outstanding obligations owed to pledgee.

If the pledgor tenders payment to be applied toward redemption of a

pawned item, it shall be so applied by the pledgee, irrespective of other outstanding obligations owed by the pledgor to the pledgee. The pledgee may not deny the pledgor the right to redeem the pawn.

§ 252.44 Insurance on pawn.

(a) Any licensee under this Part who lends money or extends credit with personal property as security and holds such property as a pledge shall maintain invault all risk insurance coverage running in favor of the pledgor for such property in amounts based upon a report issued monthly to the insurer. Such monthly report shall be an amount not less than the total agreed replacement value of all pawned items then held by the licensee.

(b) A copy of the insurance policy shall be available for inspection at the licensee's place of business and a copy shall be filed with the Commissioner.

Subpart E—Consumer Credit Transactions Other Than Pawn

§ 252.45 Consumer credit applications.

Any reservation business offering credit which is not secured by pawn shall provide an application for credit to any customer requesting credit. Within thirty (30) days of the date of application, the lender shall act upon the application and notify the customer in writing of the decision with the reason therefor. A business owner who reduces the amount of credit available to a customer or terminates a credit account shall provide written notice to the customer stating the reason for the reduction or termination of such credit.

§ 252.46 Credit disclosure statements.

Upon approval of a credit application the lender shall give the applicant the following information where applicable in a written disclosure statement:

(a) The maximum credit limit of the account.

(b) The conditions under which a finance charge may be imposed.

(c) The period in which payment may be made without incurring a finance charge.

(d) The method used in determining the balance on which the finance charge is calculated.

(e) The method used to calculate the finance charge.

(f) The periodic rates used and the range of balances to which each rate applies.

(g) The conditions under which additional charges may be made and the method for calculating those charges.

(h) A description of any lien that may be acquired on a customer's property.

(i) The minimum payment that must be made on each billing.

§ 252.47 Monthly billing statement.

On all credit accounts on which a finance charge may be imposed and for all other credit accounts when requested by the customer, a licensee shall issue a monthly billing statement to the customer stating the following information where applicable:

(a) The unpaid balance at the start of the billing period.

(b) The amount and date of each extension of credit and identification of each item costing more than ten dollars ($10).

(c) Payments made by a customer and other credits, including returns, rebates, and adjustments.

(d) The finance charge shown in dollars and cents.

(e) The rates used in calculating the finance charge plus the range of balances to which the finance charge was calculated.

(f) The closing date of the billing cycle.

(g) The unpaid balance at that time.

§ 252.48 Translation of disclosure statements.

Disclosure required by §§ 252.46 and 252.47 shall be made in writing regardless of the customer's ability to speak, read, or write the English language. Disclosure to non-English speaking persons shall be translated orally into the appropriate language.

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§ 252.49 Usury prohibited.

No reservation business may take or receive money, goods, or other things of value for a loan or forbearance on a debt that exceeds in value the principal plus twenty-four percent (24 percent) per annum finance charge. Any reservation business contracting for, reserving, or receiving directly or indirectly, any greater amount shall forfeit the finance charge.

Subpart F—Enforcement Powers, Procedures and Remedies

§ 252.50 Penalty and forfeiture of merchandise.

Any person other than an enrolled member of the tribe who either resides as a reservation business owner within the exterior boundaries of the Navajo, Hopi, or Zuni Reservations or introduces or attempts to introduce goods or to trade therein without a license shall forfeit all merchandise offered for sale to the Indians or found in the person's possession and is liable to a penalty of five hundred dollars ($500). This section may be enforced by commencing an action in the appropriate United States District Court under the provisions of 28 U.S.C. 1345.

§ 252.51 Authority to close unlicensed reservation businesses.

The Commissioner shall close any reservation business subject to the provisions of this Part that does not hold a valid license or temporary permit.

§ 252.52 Revocation of license and lease and recovery on bond.

The reservation business owner is subject to revocation of license and lease and recovery on the bond in whole or in part in the event of any violation of the regulations of this Part after a show cause proceeding according to the provisions of § 252.56.

[41 FR 22937, June 8, 1976]

§ 252.53 Cease and desist orders.

(a) If the Commissioner believes that violation of the regulations in this Part is occurring, the Commissioner may order the person believed to be in violation to show cause according to the provisions of § 252.56 why a cease and desist order should not be issued.

(b) If the person accused of the violations fails to show cause at the hearing why such an order should not issue, the Commissioner shall issue the order.

(c) A person subject to a cease and desist order issued under this section who violates the order is liable to revocation of license after a show cause proceeding according to the provisions of § 252.56 of this Part.

§ 252.54 Periodic review of performance.

(a) The Commissioner shall review licenses at ten (10) year intervals to determine whether or not the business is operating in accordance with these regulations and all other applicable laws and regulations and whether the business is adequately serving the economic needs of the community.

(b) If, as a result of the review provided in paragraph (a) of this section, the Commissioner finds that the licensee has repeatedly violated these regulations, the Commissioner may order the licensee to show cause according to the provisions of § 252.56 why the licensee's license should not be revoked.

(c) If the licensee fails to show cause why the license should not be revoked, the Commissioner shall revoke the license.

§ 252.55 Price monitoring and control.

(a) A reservation business may not charge its customers unfair or unreasonable prices. To insure compliance with this section, the Commissioner shall perform audits as provided in § 252.58. In performing those audits the Commissioner may inspect all original books, records, and other evidences of the cost of doing business. In addition, at least once a year the Commissioner shall cause to be made a survey of the prices of flour, sugar, fresh eggs, lard, coffee, ground beef, bread, cheese, fresh milk, canned fruit, and such other goods as the Commissioner deems appropriate in all stores licensed under these regulations and in a representative number of similar stores located in communities immedi-

ately adjoining the reservations. The results of the survey shall be posted publicly, sent to each licensed business, and made available to the appropriate agency of the tribal government. Copies of the survey shall be available at the office of the Area Director.

(b) If the Commissioner finds that a reservation business is charging higher prices, especially for basic consumer commodities, than those charged on the average based on the studies conducted under the provisions of paragraph (a) of this section, the Commissioner may order the business owner to show cause under the provisions of § 252.56 why an order should not be issued to reduce prices. If the Commissioner determines that the prices charged by the business are not economically justified, based on all of the information, then the Commissioner may order the business to reduce its price on all items determined to be priced too high to a reasonable price as determined by the Commissioner, but in no event to a lower price than the cost of the item increased by a reasonable mark-up.

§ 252.56 Show cause procedures.

(a) When the Commissioner believes there has been a violation of this Part the Commissioner shall serve the licensee with written notice setting forth in detail the nature of the alleged violation and stating what remedial action the Commissioner proposes to take.

(b) The licensee shall have ten (10) days from the date of receipt of notice in which to show cause why the contemplated remedial action should not be ordered.

(c) If within the ten (10) day period the Commissioner determines that the violation may be corrected and the licensee agrees to take the necessary corrective measure, the licensee shall be given the opportunity to take the necessary corrective measures.

(d) If the licensee fails within a reasonable time to correct the violation or to show cause why the contemplated remedial action should not be ordered, the Commissioner shall order the appropriate remedial action.

(e) If the Commissioner orders remedial action the licensee may appeal under the provisions of Part 2 of this Title not later than thirty (30) days after the date on which the remedial action is ordered.

§ 252.57 Procedures to cancel liability on bond.

(a) Any surety who wishes to be relieved from liability arising on a bond issued under this Part shall file with the Commissioner a statement in writing setting forth the desire of the surety to be relieved of liability and the reasons therefor.

(b) The surety shall mail a copy of the statement by certified mail, return receipt requested, to the last known address of the licensee named in the bond.

(c) Twenty (20) days after the statement required in paragraph (b) of this section is mailed to the licensee and the statement required in paragraph (a) of this section is filed with the Commissioner, the surety from all liability thereafter arising on the bond.

(d) If the licensee does not have other bond sufficient to meet the requirements of this Part or has not executed and filed a new or substitute bond within twenty (20) days after the service of the statement, the Commissioner shall declare the license and lease void.

(e) No surety is released from liability under the bond for claims which arose prior to the issuance of the Commissioner's order releasing the surety.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976; 41 FR 22937, June 8, 1976]

§ 252.58 Records, reports and obligations of reservation business owners.

(a) The Commissioner may, in consultation with interested persons and agencies, promulgate a model bookkeeping system for use in reservation businesses. Until such model bookkeeping system is promulgated, each business owner shall keep records in accordance with generally accepted accounting principles.

(b) Each reservation business owner shall file with the Area Director an annual report on or before April 15 in a form approved by the Commissioner.

Reports shall be subject to a yearly audit. The reports shall contain the names and respective interests of all persons participating in the business.

(c) The business owner or an employee shall record all sales and purchases whether for cash or credit. If the business is on the Navajo Reservation the owner or an employee shall supply the customer with a copy of the sale transaction containing a description of the article purchased or sold, the date of the transaction, and the price. A cash register receipt complies with this paragraph for grocery or dry goods purchases for cash.

(d) The licensee shall keep a duplicate copy of any writing required by paragraph (c) of this section for a period of not less than three (3) years and shall provide the customer or the customer's representative one copy of those writings upon request.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976; 41 FR 13937, Apr. 1, 1976]

§ 252.59 Customer complaint procedures.

(a) Any customer of a licensee may file a complaint with the Commissioner alleging that the licensee has committed a violation of this Part.

(b) Upon receipt of a customer complaint the Commissioner shall initiate show cause proceedings under the provisions of § 252.56 of this Part.

(c) If the Commissioner fails to order remedial action within forty (40) days from the date the complaint is filed, the complainant may appeal under the provisions of Part 2 of this Title not later than seventy (70) days after the date the complaint is filed.

(d) If the Commissioner orders remedial action, the complainant may appeal under the provisions of Part 2 of this Title not later than thirty (30) days after the date on which the remedial action is ordered.

PART 254—OPERATION OF U.S.M.S. "NORTH STAR" BETWEEN SEATTLE, WASH., AND STATIONS OF THE BUREAU OF INDIAN AFFAIRS AND OTHER GOVERNMENT AGENCIES, ALASKA

Sec.

254.1 Responsibility for operation.
254.2 Transportation of freight for Federal agencies and others.
254.3 Employment of Natives.
254.4 Prohibition of trade with Natives.
254.5 Passenger rates.
254.6 Private passengers.
254.7 Transportation of children.
254.8 Transportation of Federal employees and their families and Natives.
254.9 Preferential passengers.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 22 FR 10674, Dec. 24, 1957, unless otherwise noted.

§ 254.1 Responsibility for operation.

(a) The director of the Seattle Liaison Office, Bureau of Indian Affairs, Seattle, Washington, under the jurisdiction of the Area Director, Juneau Area Office, Bureau of Indian Affairs, Juneau, Alaska, has responsibility for the operation of the ship for the Department of the Interior, Bureau of Indian Affairs, including repair, upkeep, payment of bills and employment of personnel.

(b) Itineraries for each voyage shall be made by the Director of the Seattle Liaison Office in consultation with the Area Director of the Juneau Area Office, Bureau of Indian Affairs, Juneau, Alaska. Preference is to be accorded to the work of the Bureau of Indian Affairs. The Area Director is vested with authority to direct the use of the ship to perform special services which may arise and to act in any emergency.

[39 FR 12246, Apr. 4, 1974]

§ 254.2 Transportation of freight for Federal agencies and others.

(a) All agencies of the Federal Government, including activities of the Bureau of Indian Affairs, Alaskan Natives, cooperatives of Alaskan Natives, business enterprises owned and operated by Alaskan Natives and Federal employees shall be charged for freight, lighterage and longshoring

and other terminal charges in accordance with tariff rates and terminal charges established by the Commissioner of Indian Affairs.

(b) Baggage and other personal property of passengers that cannot be readily accommodated in the passengers' staterooms will be manifested as freight and charged for at the established rates.

(c) Commercial freight may be carried between points where adequate service is not provided by commercial vessels. Commercial freight, when carried, shall be prepaid at the same tariff rates established under paragraph (a) of this section.

(d) All freight accepted must be properly manifested, giving the name and address of the consignor and the consignee, and a description of the goods, including gross weight.

(e) The liability of the United States for any loss or damage to, or non-delivery of freight shall be limited as permitted in 46 U.S.C. 746 and the Carriage of Goods by Sea Act (46 U.S.C. 1300–1315), and the terms of such limitation of liability shall be contained in any document of title relating to the carriage of goods by sea.

[22 FR 10674, Dec. 24, 1957, as amended at 27 FR 12399, Dec. 14, 1962]

§ 254.3 Employment of Natives.

Natives shall be employed on the "North Star" to fill all positions for which they are qualified.

§ 254.4 Prohibition of trade with Natives.

Officers and members of the crew on the vessel are prohibited from engaging in trade with the Natives.

§ 254.5 Passenger rates.

Rates for transportation of passengers shall be established by the Commissioner and shall be the same for all passengers, except as provided in § 254.7. Rates shall be on file for public inspection at the Bureau of Indian Affairs offices in Seattle, Washington and Juneau, Alaska.

§ 254.6 Private passengers.

No private passengers (except Federal employees and their families and Natives of Alaska) shall be transported on the "North Star" between points where adequate services are provided by commercial vessels. Where such commercial vessels are not available, and where accommodations can be furnished on the "North Star" without detriment to Government business, private travelers may be transported at the rates established pursuant to § 254.5.

§ 254.7 Transportation of children.

The rates established for the transportation of children shall be subject to the following rules:

(a) No charge shall be made for transportation of children under two years of age.

(b) Children who have reached their second birthday, but not their twelfth birthday shall be transported at half the rate established pursuant to § 254.5 for all other passengers.

§ 254.8 Transportation of Federal employees and their families and Natives.

(a) All agencies of the Federal Government will be billed at the rates established pursuant to § 254.5 for each employee traveling on official business.

(b) When not in official travel status, Federal employees and families of Federal employees will be transported at the rates established pursuant to § 254.5.

(c) Natives of Alaska, who are not indigent, will be charged the same rates as all other passengers.

§ 254.9 Preferential passengers.

In the booking of passage on the ship, preference shall be given to employees of the Bureau of Indian Affairs and their families, to Natives of Alaska, and to Public Health Service personnel traveling in behalf of the Indian health program, and their families.

PART 255—USE OF COLUMBIA RIVER INDIAN IN-LIEU FISHING SITES

Sec.

255.1 Fishing sites subject to regulation.
255.2 Persons eligible to use sites.
255.3 Identification of eligible users.
255.4 Applicability of laws and regulations.

Sec.

255.5 Damage to Government-owned property.
255.6 Structures.
255.7 Liability for condition and use of structures.
255.8 Abandoned property.
255.9 Camping and use restrictions.
255.10 Appeals from administrative actions.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9.

SOURCE: 32 FR 3945, Mar. 10, 1967, unless otherwise noted.

§ 255.1 Fishing sites subject to regulation.

Use of any of the lands acquired by the Secretary of War and transferred to the Secretary of the Interior pursuant to the Act of March 2, 1945 (59 Stat. 22), as amended (hereinafter called "in lieu fishing sites" or "sites") to replace Indian fishing grounds submerged or destroyed as a result of the construction of the Bonneville Dam shall be subject to the following rules and regulations. The Area Director, Portland Area Office, Bureau of Indian Affairs (hereinafter called "Area Director"), may suspend or withdraw the privileges of access to or use of any or all the sites for any violation of the regulations in this part or of any rules issued pursuant to the regulations in this part.

§ 255.2 Persons eligible to use sites.

The in-lieu fishing sites are for the benefit of the Yakima, Umatilla, and Warm Springs Indian Tribes, and such other Columbia River Indians, if any, who had treaty fishing rights at locations inundated or destroyed by Bonneville Dam, to be used is accordance with treaty rights. The use of the sites is restricted to such Indians; however, this shall not preclude the use of camping areas on the sites by the families of such Indians.

§ 255.3 Identification of eligible users.

For the purpose of identification of the persons entitled to use the sites, each eligible Indian shall, when using said sites, have in his possession an identification card issued by his tribe identifying him as a member of that tribe. The Area Director shall issue identification cards to such other Columbia River Indians, if any, as may be eligible to use the sites. Any individual using the sites shall exhibit the identification upon request of authorized Federal, State or local officials.

§ 255.4 Applicability of laws and regulations.

No Indian shall use any of the sites for any activity that is contrary to the provisions of any applicable law or regulation of his tribe or contrary to any applicable State or Federal law or regulation. The Area Director may in his discretion suspend or withdraw privileges for future access to or use of the sites for violation of such laws and regulations: *Provided,* That, nothing contained in the regulations in this part is intended or shall be construed as limiting or affecting any treaty rights of any tribe nor as subjecting any Indian properly exercising tribal treaty rights to State fishing laws or regulations which are not compatible with such rights.

§ 255.5 Damage to Government-owned property.

Anyone committing any act of depredation, destruction, theft, or misuse of the land, buildings, fences, signs, or other structures which are the property of the United States shall be subject to prosecution under applicable Federal or State law.

§ 255.6 Structures.

No dwellings or structures shall be erected, placed, or maintained upon the sites, except that camping facilities may be placed thereon only as herein described and fish drying facilities and fishing platforms may be erected by Indians for use during the fishing season. Facilities for camping on the sites shall be limited to tents, tepees, campers, and mobile trailers. All such tents, tepees, campers, and mobile trailers shall be removed from the sites at any time the owners thereof are not actively engaged in fishing, drying fish, or processing fish by other means. Any structures erected or maintained in violation of this section may be removed, demolished or otherwise disposed of, with or without prior notice, as determined by the Area Director, and the cost of such disposition shall be assessed against the person re-

sponsible for the structure. Sites must be used in a manner that conforms to the health, sanitation, and safety requirements of the State or local law, or, in the absence of appropriate State or local laws, to the health, sanitation, and safety recommendations of the U.S. Public Health Service. The privileges or right of access to or use of the sites of any individual may be suspended or withdrawn, in the discretion of the Area Director, when such individual having violated such health, sanitation, and safety requirements repeats such violation after having been given notice to cease and desist therefrom.

[34 FR 2248, Feb. 15, 1969]

§ 255.7 Liability for condition and use of structures.

Any private structures including drying sheds, tents, tepees, or fishing platforms erected, placed, or maintained on the sites are the sole responsibility of their owners, and all use of such structures shall be at the user's or owner's sole responsibility and risk. Neither the United States nor any officer or employee thereof warrants, makes any representation, or is responsible for the safety or condition of any such structure.

[34 FR 2248, Feb. 15, 1969]

§ 255.8 Abandoned property.

No vehicle, trailer, boat, or other personal property shall be abandoned on the sites. Property abandoned in violation of the regulations in this part may be removed without prior notice to the owner and may be disposed of at the owner's expense as determined by the Area Director.

§ 255.9 Camping and use restrictions.

All camping, picnicking, use of alcoholic beverages, setting or use of fires, use of the sites for cleaning of fish, the deposit of any garbage, paper, cans, bottles, or rubbish of any kind, or use of the sites for any commercial activity (including commercial purchase of fish) shall be subject to such prohibitions, restrictions, or other regulations as the Area Director may prescribe and cause to be posted on the site or sites to which said regulations are applicable; provided that no fee may be charged to any Indian or member of his family for any such use.

§ 255.10 Appeals from administrative actions.

Any decision made by the Area Director under this Part 255 shall be subject to appeal to the Commissioner of Indian Affairs, and any decision on the Commissioner of Indian Affairs on such an appeal may be appealed to the Secretary of the Interior in accordance with Part 2 of this chapter.

PART 256—OFF-RESERVATION TREATY FISHING

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Subpart A—General Provisions

AUTHORITY: 25 U.S.C. 2 and 9; 5 U.S.C. 301, unless otherwise noted.

SOURCE: 32 FR 10434, July 15, 1967, unless otherwise noted.

§ 256.1 Purpose.

(a) The purposes of these regulations (Part 256) are:

(1) To assist in protecting the off-reservation nonexclusive fishing rights which are secured to certain Indian tribes by their treaties with the United States;

(2) To promote the proper management, conservation and protection of fisheries resources which are subject to such treaties of the United States;

(3) To provide for determination of restrictions on the manner of exercising nonexclusive fishing privileges under rights secured to Indian tribes by such treaties of the United States necessary for conservation of the fisheries resources;

(4) To assist in the orderly administration of Indian Affairs;

(5) To encourage consultation and cooperation between the states and Indian tribes in the management and improvement of fisheries resources affected by such treaties;

(6) To assist the states in enforcing their laws and regulations for the management and conservation of fisheries resources in a manner compatible with the treaties of the United States which are applicable to such resources.

(b) The conservation regulations of this Part 256 are found to be necessary to assure that the nonexclusive rights secured to certain Indian tribes by treaties of the United States to fish at usual and accustomed places outside the boundaries of an Indian reservation shall be protected and preserved for the benefit of present and future members of such tribes in a manner consistent with the nonexclusive character of such rights. Any exercise of an Indian off-reservation treaty fishing right shall be in accordance with this Part 246 and any applicable area regulations issued hereunder.

§ 256.2 Area regulations.

(a) The Secretary of the Interior may upon request of an Indian tribe, request of a State Governor, or upon his own motion, and upon finding that Federal regulation of Indian fishing in any waters in which Indians have a treaty-secured nonexclusive fishing right is necessary to assure the conservation and wise utilization of the fishery resources for the present and future use and enjoyment of the Indians and other persons entitled thereto, promulgate regulations to govern the exercise of such treaty-secured fishing right in such waters for the purpose of preventing, in conjunction with appropriate State conservation laws and regulations governing fishing by persons not fishing under treaty rights, the deterioration of the fishery resources.

(b) In formulating such regulations the Secretary of the Interior may incorporate such State laws or regulations, or such tribal regulations as have been approved by the Commissioner of Indian Affairs, as he finds to be consistent with the Indians' rights under the Treaty and the conservation of the fishery resources.

(c) Before promulgating such regulations the Secretary of the Interior will seek the views of the affected Indian tribes, of the fish or game management agency or agencies of any affected State, and of other interested persons. Except in emergencies where the Secretary finds that the exigencies require the promulgation of regulations to be effective immediately, a notice of proposed rule making will be published in the FEDERAL REGISTER in accordance with 5 U.S.C. 553 to afford an opportunity to submit comments and information, at such times and in such manner as may be specified in the notice. In the event of the emergency promulgation of regulations, interested persons will be afforded, as soon as possible, an opportunity to request amendment or revocation thereof.

(d) Any regulations issued pursuant to this section shall contain provisions for invoking emergency closures or restrictions or the relaxation thereof at the field level when necessary or appropriate to meet conditions not fore-

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seeable at the time the regulations were issued.

(e) Regulations issued pursuant to this § 256.2 may include such requirements for recording and reporting catch statistics as the appropriate state fish and game agencies or the Secretary of the Interior deem necessary for effective fishery management.

§ 256.3 Identification cards.

(a) The Commissioner of Indian Affairs shall arrange for the issuance of an appropriate identification card to any Indian entitled thereto as prima facie evidence that the authorized holder thereof is entitled to exercise the fishing rights secured by the treaty designated thereon. The Commissioner may cause a federal card to be issued for this purpose or may authorize the issuance of cards by proper tribal authorities: *Provided*, That any such tribal cards shall be countersigned by an authorized officer of the Bureau of Indian Affairs certifying that the person named on the card is a member of the tribe issuing such card and that said tribe is recognized by the Bureau of Indian Affairs as having fishing rights under the treaty specified on such card. Copies of the form of any identification card authorized pursuant to this section and a list of the authorized Bureau of Indian Affairs issuing or countersigning officials shall be furnished to the fisheries management and enforcement agencies of any State in which such fishing rights may be exercised.

(b) No such card shall be issued to any Indian who is not on the official membership roll of the tribe which has been approved by the Secretary of the Interior. *Provided*, That until December 31, 1980, a temporary card may be issued to any member of a tribe not having an approved current membership roll who submits evidence of his entitlement thereto satisfactory to the issuing officer and, in the case of a tribally issued card, to the countersigning officer. Any Indian claiming to have been wrongfully denied a card may appeal the decision in accordance with Part 2 of this chapter.

(c) No person shall be issued an identification card on the basis of membership in more than one tribe at any one time.

(d) Each card shall state the name, address, tribal affiliation and enrollment number (if any) of the holder, identify the treaty under which the holder is entitled to fishing rights, contain such additional personal identification data as is required on fishing licenses issued under the law of the State or States within which it is used, and be signed by the issuing officer and by the holder.

(e) No charge or fee of any kind shall be imposed by the Commissioner of Indian Affairs for the issuance of an identification card hereunder: *Provided*, That this shall not prevent any Indian tribe from imposing any fee or tax which it may otherwise be authorized to impose upon the exercise of any tribal fishing right.

(f) All cards issued by the Commissioner of Indian Affairs pursuant to this Part 256 shall be and remain the property of the United States and may be retaken by any Federal, State, or tribal enforcement officer from any unauthorized holder. Any card so retaken shall be immediately forwarded to the officer who issued it.

(g) The failure of any person who claims to be entitled to the benefits of a treaty fishing right to have such a card in his immediate personal possession while fishing or engaging in other activity in the claimed exercise of such right to display it upon request to any Federal, State, or tribal enforcement officer shall be prima facie evidence that the person is not entitled to exercise an Indian fishing right under a treaty of the United States.

(h) No person shall allow any use of his identification card by any other person.

(5 U.S.C. 301, R.S. 463 and 465.)

[32 FR 10434, July 15, 1967, as amended at 43 FR 4257, Feb. 1, 1978]

§ 256.4 Identification of fishing equipment.

All fishing gear or other equipment used in the exercise of any off-reservation treaty fishing right shall be marked in such manner as shall be prescribed in regulations issued pursuant to § 256.2 hereof to disclose the identity of its owner or user. In the ab-

sence of proof to the contrary, any fishing gear which is not so marked or labeled shall be presumed not to be used in the exercise of an off-reservation treaty fishing right and shall be subject to control or seizure under State law.

§ 256.5 Use of unauthorized helpers or agents.

No Indian shall, while exercising off-reservations treaty-secured fishing rights, permit any person 12 years of age or older other than the authorized holder of a currently valid identification card issued pursuant to this Part 256 to fish for him, assist him in fishing, or use any gear of fishing location identified as his gear or location pursuant to this Part 256.

§ 256.6 Enforcement and penalties.

(a) Any Indian tribe with a tribal court may confer jurisdiction upon such court to punish violations by its members of this Part 256 or of the area regulations issued pursuant thereto. Jurisdiction is hereby conferred upon each Court of Indian Offenses established pursuant to Part 11 of this chapter to punish such violations by members of tribes whose reservations are under the jurisdiction of such court. Courts of Indian Fishing Offenses may be created pursuant to Part 11 of this chapter to punish such violations by members of any tribe or group of tribes for which there is otherwise no Court of Indian Offenses or tribal court with jurisdiction to enforce this Part 256. The provisions of Part 11 of this chapter shall apply to any such court with respect to the exercise of its jurisdiction to enforce this Part 256. All jurisdiction conferred by this section shall apply without regard to any territorial limitations otherwise applicable to the jurisdiction of such court.

(b) Acceptance or use of an identification card issued pursuant to this Part 256 or use of any fishing gear marked or identified pursuant thereto shall constitute an acknowledgment that the fishing done under such card or with such gear is in the claimed exercise of a tribal fishing right and is subject to the jurisdiction of the tribal court, Court of Indian Offenses, or Court of Indian Fishing Offenses. Except as may be otherwise provided by tribal regulations approved by or on behalf of the Secretary of the Interior, any person claiming to be exercising such tribal right and fishing in violation of the regulations contained in or issued under this Part 256 may be punished by a fine of not to exceed $500, imprisonment of not to exceed 6 months, or both, and shall have his tribal fishing privileges suspended for not less than 5 days for any violation of this Part 256 or of any area regulation issued pursuant thereto. The court shall impound the fishing rights identification card of any person for the period which the fishing privileges are suspended.

§ 256.7 Savings provisions.

Nothing in this Part 256 shall be deemed to:

(a) Prohibit or restrict any persons from engaging in any fishing activity in any manner which is permitted under state law;

(b) Deprive any Indian tribe, band, or group of any right which may be secured it by any treaty or other law of the United States;

(c) Permit any Indian to exercise any tribal fishing right in any manner prohibited by any ordinance or regulation of his tribe;

(d) Enlarge the right, privilege, or immunity of any person to engage in any fishing activity beyond that granted or reserved by treaty with the United States;

(e) Exempt any person or any fishing gear, equipment, boat, vehicle, fish or fish products, or other property from the requirements of any law or regulation pertaining to safety, obstruction of navigable waters, national defense, security of public property, pollution, health and sanitation, or registration of boats or vehicles;

(f) Abrogate or modify the effect of any agreement affecting fishing practices entered into between any Indian tribe and the United States or any State or agency of either.

§§ 256.8–256.10 [Reserved]

Subpart B—Fraser River Convention Sockeye and Pink Salmon Fishery

AUTHORITY: 25 U.S.C. 2, 9; 5 U.S.C. 301; 43 U.S.C. 1451 *et seq.*; 25 CFR Part 256.

SOURCE: 44 FR 37908, June 29, 1979, unless otherwise noted.

§ 256.11 Purpose of this subpart: Compliance.

(a) This subpart governs fishing for sockeye and pink salmon by any treaty Indian who is fishing at his tribe's treaty fishing places in U.S. Convention waters during the time the Commission exercises control over the Fraser River Convention sockeye and pink salmon fishery.

(b) Any treaty Indian shall comply with this subpart when fishing for sockeye and pink salmon at his tribe's treaty fishing places in U.S. Convention waters during the time the Commission exercises control over the Fraser River Convention sockeye and pink salmon fishery. Fishing by any person which is not in accordance with these regulations is governed by 50 CFR Part 371 and violations thereof are subject to the penalties of the Act.

§ 256.12 Definition of terms.

(a) Act means: the Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776–776f.

(b) Authorized assistant means: Any Indian person described in Section 256.15 and thereby authorized to assist the treaty Indian.

(c) Commission means: The International Pacific Salmon Fisheries Commission provided for by Article II of the Convention.

(d) Convention means: The convention between the United States and Canada for the protection, preservation, and extension of the sockeye and pink salmon fisheries of the Fraser River system, signed at Washington on the 26th day of May 1930, as amended by the protocol to include pink salmon, signed at Ottawa on the 28th day of December 1956.

(e) Convention waters mean: Those waters described in Article I of the Convention.

(f) Enforcement Officer means: (1) Any enforcement agent of the National Marine Fisheries Service;

(2) Any commissioned, warrant, or petty officer of the Coast Guard;

(3) Any Coast Guard personnel accompanying and acting under the direction of any persons described in paragraph (2) of this paragraph (f);

(4) Any tribal enforcement officer authorized to enforce treaty tribal regulations described under § 256.19.

(5) Any other person authorized by the Regional Director, Northwest Region, National Marine Fisheries Service, to enforce the provisions of the Convention, the Commission's regulations, the Act, or 50 CFR Part 371.

(6) Any other person authorized by the Secretary of the Interior to enforce the provisions of 25 CFR Part 256, Subpart A or B.

(g) Fish, fishing means: The fishing for, catching, or taking, or the attempted fishing for, catching, or taking, of any sockeye or pink salmon in Convention waters.

(h) Fishing gear means: Any net, trap, hook, or other device, appurtenance or equipment, of whatever kind or description, used or capable of being used for the capturing of sockeye or pink salmon.

(i) Lawful gear means: Any gill net, purse seine, reef net, troll line, beach seine, or stake net, as defined under tribal law or in Washington Administrative Code Chapter 220-16 and 220-47-301 through 304.

(j) Person includes: Individuals, partnerships, associations, and corporations.

(k) Pink salmon means: That species of salmon known by the scientific name *Oncorhynchus gorbuscha.*

(l) Sockeye salmon means: That species of slamon known by the scientific name *Oncorhynchus nerka.*

(m) State areas means: Fishing areas defined as Puget Sound Salmon Management and Catch Reporting Areas in Washington Administrative Code Chapter 220-22.

(n) Stretch measure means: The distance between the inside of one knot to the outside of the opposite (vertical) knot in one mesh. Measurement shall be taken when the mesh is

stretched vertically while wet, by using a tension of ten (10) pounds on any three (3) consecutive meshes, then measuring the middle mesh of the three while under tension.

(o) Treaty Indian means: Any member of a treaty Indian tribe which has treaty fishing places in U.S. Convention waters.

(p) Treaty Indian identification means: Identification issued by the Bureau of Indian Affairs or a treaty Indian tribe identifying the holder as a member of the issuing tribe. The identification card shall include the name and address of the tribal member, the member's enrollment number (if any), date of birth, and the member's photograph.

(q) Treaty Indian tribe means: Any tribe which has been found by the United States District Court for the Western District of Washington to be entitled to exercise treaty-secured fishing rights in U.S. Convention waters. Currently these tribes are the Makah Tribe, Lower Elwha Band Clallam Tribe, Port Gamble Band Clallam Tribe, Suquamish Tribe, Lummi Tribe, Nooksack Tribe, the Swinomish Indian Tribal Community, and Tulalip Tribe.

(r) Treaty fishing places (of an Indian tribe) means: Any location which shall have been previously determined by the United States District Court for the Western District of Washington in *U.S.* v. *Washington* to be a place at which that treaty tribe may take fish under rights secured by a treaty of the United States with such tribe or its predecessor in interest.

(s) Washington Administrative Code means: Only those chapters and sections of the Washington Administrative Code that were in effect as of June 24, 1979.

(t) Vessel means: Every type or description of water craft or other contrivance used, or capable of being used, as a means of transportation in water.

§ 256.13 Other laws and regulations.

Nothing in this subpart shall be construed to relieve a treaty Indian or his authorized assistant from any applicable requirement lawfully imposed by a tribe, the United States, or the State of Washington. Nor shall anything herein authorize any treaty Indian or his authorized assistant to act contrary to any restriction or requirement of applicable tribal laws.

§ 256.14 Identification.

(a) Any treaty Indian fishing under the authority of this subpart shall have in his possession at all such times treaty Indian identification required by 25 CFR 256.3 and by applicable tribal law.

(b) Any person assisting a treaty Indian under the authority of § 256.15 shall have in his possession at all such times an identification card issued by the Bureau of Indian Affairs or by a treaty Indian tribe, identifying the holder as an Indian qualified to assist a treaty Indian. The identification card shall include the name of the issuing tribe, the name, address, tribal affiliation, date of birth, and photograph of the assistant, and the name and enrollment number (if any) of the treaty Indian the assistant is qualified to assist.

(c) Identification described in paragraphs (a) or (b) of this section shall be shown on demand to an enforcement officer by the treaty Indian or authorized assistant.

(d) Any treaty Indian fishing under this subpart shall comply with the treaty Indian vessel and gear identification requirements of Decision No. 1 and subsequent Orders of the U.S. District Court for the Western District of Washington in *U.S.* v. *Washington*, as implemented in Washington Administrative Code 220-47-121.

§ 256.15 Fishing assistance.

Notwithstanding 25 CFR 256.5, any treaty Indian fishing under this subpart may be assisted, if authorized by the treaty Indian's tribe, by the treaty Indian's spouse (if Indian), forebears (if Indian), children, grandchildren and siblings authorized by the United States District Court for the Western District of Washington in *U.S.* v. *Washington*. Persons so authorized shall be considered treaty Indians for the purposes of this subpart.

§ 256.16 Reporting requirements.

(a) Any person receiving or purchasing fish caught by any treaty Indian fishing under this subpart shall comply with Decision No. 1 and subsequent Orders of the U.S. District Court for the Western District of Washington in *U.S.* v. *Washington* as implemented by the treaty tribes and in Washington Administrative Code Chapter 220-69.

(b) Any treaty Indian who sells fish caught under the authority of this subpart directly to a consumer, restaurant, boathouse, or any other retail outlet shall comply with Washington Administrative Code Chapter 220-69.

(c) No person receiving or purchasing sockeye and pink salmon caught in U.S. Convention waters during the time the Commission exercises control over fishing for sockeye and pink salmon shall fail to permit enforcement officers to inspect records or reports required by WAC 220-69 or to inspect fish landing, holding or storage areas under the control of this person.

§ 256.17 Fishing seasons.

(a) No treaty Indian shall fish for sockeye or pink salmon with troll gear in High Seas Convention waters between June 15, 1979 and September 6, 1979, both dates inclusive, except from June 15 to June 24; June 29 to July 8; July 13 to July 22; July 27 to August 5; August 10 to August 19; and August 24 to September 2, all dates inclusive.

(b) No treaty Indian shall fish for sockeye or pink salmon with nets in U.S. Convention waters from June 24, 1979 to July 14, 1979, both dates inclusive.

(c) No treaty Indian shall fish for sockeye or pink salmon in U.S. Convention waters in State Areas 4B and that part of State Area 5 which extends westerly of a line drawn from Pillar Point on the Olympic Peninsula to Sheringham Point on Vancouver Island, except with lawful gear from:

(1) July 15, 1979 to August 4, 1979, both dates inclusive, from 7:00 p.m. on Sunday evening to 9:30 a.m. on Saturday morning.

(2) August 5, 1979 to August 18, 1979, both dates inclusive, from 7:00 p.m. on Sunday evening to 9:30 a.m. on Thursday morning.

(3) August 19, 1979 to September 8, 1979, both dates inclusive from 6:00 p.m. on Sunday evening to 9:00 a.m. on Saturday morning.

(4) September 9, 1979 to September 22, 1979, both dates inclusive from 6:00 p.m. on Sunday evening to 9:00 a.m. on Thursday morning.

(d) No treaty Indian shall fish for sockeye or pink salmon in U.S. Convention waters in that part of State Area 5 which extends easterly of a line drawn from Pillar Point on the Olympic Peninsula to Sheringham Point on Vancouver Island, and State Areas 6C, 6, 6A, 7, 7A, with purse seines except from:

(1) July 15, 1979 to July 21, 1979, both dates inclusive, from 5:00 a.m. on Monday morning to 9:30 p.m. on Wednesday evening.

(2) July 22, 1979 to July 28, 1979, both dates inclusive, from 5:00 a.m. on Sunday morning to 9:30 p.m. on Tuesday evening.

(3) July 29, 1979 to August 4, 1979, both dates inclusive, from 5:00 a.m. on Monday morning to 9:30 p.m. on Wednesday evening.

(4) August 5, 1979 to August 11, 1979, both dates inclusive, from 5:00 a.m. on Sunday morning to 9:30 p.m. on Monday evening.

(5) August 12, 1979 to August 18, 1979, both dates inclusive, from 5:00 a.m. on Monday morning to 9:30 p.m. on Wednesday evening.

(6) August 19, 1979 to August 25, 1979, both dates inclusive, from 5:00 a.m. on Monday morning to 9:00 p.m. on Thursday evening.

(7) August 26, 1979 to September 8, 1979, both dates inclusive, from 5:00 a.m. on Sunday morning to 9:00 p.m. on Thursday evening.

(8) September 9, 1979 to September 22, 1979, both dates inclusive, from 5:00 a.m. on Sunday morning to 9:00 p.m. on Tuesday evening.

(e) No treaty Indian shall fish for sockeye or pink salmon in U.S. Convention waters in that part of State Area 5 which extends easterly of a line line drawn from Pillar Point on the Olympic Peninsula to Sheringham Point on Vancouver Island, and State Areas 6C, 6, 6A, 7, and 7A, with gill nets except from:

(1) July 15, 1979 to July 21, 1979, both dates inclusive, from 7:00 p.m. on Sunday evening to 9:30 a.m. on Thursday morning.

(2) July 22, 1979 to July 28, 1979, both dates inclusive, from 5:00 a.m. on 7:00 p.m. on Sunday evening to 9:30 a.m. on Thursday morning.

(3) July 29, 1979 to August 4, 1979, both dates inclusive, from 7:00 p.m. on Sunday evening to 9:30 a.m. on Thursday morning.

(4) August 5, 1979 to August 11, 1979, both dates inclusive, from 7:00 p.m. on Sunday evening to 9:30 a.m. on Wednesday morning.

(5) August 12, 1979 to August 18, 1979, both dates inclusive, from 7:00 p.m. on Sunday evening to 9.30 a.m. on Thursday morning.

(6) August 19, 1979 to September 8, 1979, both dates inclusive, from 6:00 p.m. on Sunday evening to 9:00 a.m. on Friday morning.

(7) September 9, 1979 to September 22, 1979, both dates inclusive, from 6:00 p.m. on Sunday evening to 9:00 a.m. on Wednesday morning.

(f) Notwithstanding the foregoing provisions, no treaty Indian shall fish for sockeye or pink salmon in U.S. Convention waters lying westerly and northerly of a straight line drawn from Iwerson's Dock on Point Roberts to Georgina Point Light at Active Pass, from August 26, 1979 to September 1, 1979 and from September 23, 1979 to October 6, 1979, all dates inclusive.

(g) Notwithstanding the foregoing provisions, no treaty Indian shall fish for sockeye or pink salmon in U.S. Convention waters lying westerly of a line projected true south from the Department of Fisheries marker on East Point Roberts to the intersection with the International Boundary, from September 2, 1979 to September 22, 1979, both dates inclusive.

(h) The foregoing regulations shall not apply to the following United States Convention waters.

(1) The waters of Area 7B lying easterly and inside of a line projected from Gooseberry Point on the Mainland due south to its intersection with Lummi Island (the Initiative '77 line), and then along the eastern shoreline of Lummi Island to Carter Point, then to the most northerly tip of Vendovi Island, then to Clark Point on Guemes Island, then to March Point on Fidalgo Island.

(2) State Areas 6B and 7C.

(3) Preserves previously established by the Director of Fisheries of the State of Washington for the protection and preservation of other species of food fish.

§ 256.18 Emergency orders.

(a) These regulations are subject to frequent change by emergency order, particularly with respect to permissible fishing times. Notice of the basis of the emergency and anticipated change will be transmitted immediately to the Northwest Indian Fisheries Commission for the treaty tribes, in order that the treaty tribes may amend tribal fishing regulations in response to the emergency.

(b) Notice of a change in these regulations and tribal regulations referred to in § 256.19 will be provided through the Northwest Indian Fisheries Commission and is available by calling the Northwest Indian Fisheries Hot-Line (1-800-562-6142). Emergency orders will be published in the FEDERAL REGISTER as quickly as possible.

(c) Emergency orders are effective at the time notice is provided to the Northwest Indian Fisheries Commission or as otherwise stated in the order, whichever time is later.

§ 256.19 Treaty tribe fishing regulations.

To the extent that they are consistent with this subpart, treaty tribe fishing regulations governing treaty Indian sockeye and pink salmon fishing in U.S. Convention waters during the time the Commission exercises control, which are approved under 25 CFR 256.2(b), and emergency orders under such treaty tribe fishing regulations, are incorporated herein and effective for all purposes as part of this subpart.

§ 256.20 Unlawful possession.

No treaty Indian shall possess sockeye or pink salmon on board a fishing vessel which is engaged in a fishery for other species in U.S. Convention waters during the times Convention waters are closed to sockeye and pink

salmon fishing by the regulations in this subpart.

§ 256.21 Forcible assault on enforcement officer.

No person fishing under this subpart shall assault, resist, oppose, impede, intimidate, or interfere with an enforcement officer engaged in enforcing this subpart.

Subpart C—[Reserved]

Subpart D—Great Lakes and Connecting Waters in Michigan Ceded in Treaty of 1836

AUTHORITY: The provisions of Subpart D are issued under the authority of 25 U.S.C. 2, 9; 43 U.S.C. 1457; Reorganization Plan No. 3 of 1950 (64 Stat. 1262); Treaty of March 28, 1836 (7 Stat. 491); and 25 CFR 256, Subpart A.

SOURCE: 44 FR 65748, Nov. 15, 1979, unless otherwise noted.

§ 256.40 Purpose of this subpart.

The purpose of these regulations is to assure the conservation of the fishery resources in the Great Lakes and connecting waterway in the State of Michigan for the present and future use and enjoyment of the members of the Indian tribes regulated hereby and other persons entitled to participate in the fishery, and to prevent the deterioration of the fishery resource. These regulations were developed in fulfillment of a Memorandum of Understanding among the tribes and the Department of the Interior governing the regulation of treaty fishing activity. This subpart is promulgated pursuant to Subpart A and is subject to the provisions contained therein.

§ 256.41 Definition of terms.

(a) "Ad Hoc Technical Working Group" means the group comprised of one biologist each designated by the State of Michigan, the Department of the Interior and the tribes to assemble data and issue reports on the status of fish stocks in the waters in which the fishing activity of the tribes occurs.

(b) "Commercial fishing" means fishing activity engaged in for the purpose of sale or exchange of fish.

(c) "Enforcement officer" means:

(1) Any enforcement agent of the Bureau of Indian Affairs, Fish and Wildlife Service, and Coast Guard, and any other person authorized by the Secretary to enforce the provisions of 25 CFR 256 Subpart A or D;

(2) Any tribal enforcement officer authorized by tribal law to enforce tribal conservation regulations; and

(3) Any conservation officer of the Michigan Department of Natural Resources and any other person authorized by the laws of the State of Michigan to enforce State conservation laws and regulations.

(d) "Fishing activity" means fishing for, catching, taking, or attempting to fish for, catch or take any species of fish from treaty waters, and includes all related activities which occur in or on the water, and in the process of loading or unloading fish, nets, or related gear, in or from a boat.

(e) "Pleasure and subsistence fishing" means fishing activity conducted with hook and line, spear, or a single gill net not exceeding 200 feet in length, for personal and family use and not for sale or exchange.

(f) "Secretary" means the Secretary of the Interior.

(g) "Target Fishing" means fishing activity for the purpose of catching or taking a specific species or several specific species of fish.

(h) "Treaty" means the Treaty of March 28, 1836 (7 Stat. 491).

(i) "Tribes" means the Bay Mills Indian Community and the Sault Ste. Marie Tribe of Chippewa Indians.

§ 256.42 Scope and application.

(a) This subpart applies to the fishing activity of members of the tribes in the waters of the Great Lakes and connecting waterway located within the State of Michigan and ceded in the treaty.

(b) Each of the provisions of this subpart applies to the commercial fishing of tribal members.

(c) Each of the provisions of this subpart applies to the pleasure and subsistence fishing of tribal members except the requirements of §§ 256.44 (identification cards), 256.45(a) (catch reporting), and 256.46(c) (target fishing for lake trout). Further regulation

of pleasure and subsistence fishing is reserved to the tribes.

§ 256.43 Jurisdiction and enforcement.

(a) Jurisdiction to enforce these regulations on tribal members is vested in tribal courts and the Courts of Indian Offenses of the reservations of the tribes.

(b) Enforcement officers may enforce the regulations in this subpart and further, may exercise the existing enforcement powers of the tribes under tribal law. The tribes will continue to accept and prosecute violations of tribal regulations by tribal members referred to them by the Michigan Department of Natural Resources, other law enforcement agencies, or private parties.

(c) In accordance with the provisions of 25 CFR 256.6, violations of these regulations may be punished by a fine not to exceed $500, imprisonment of not to exceed 6 months, or both. In addition, the treaty fishing activity of the violator shall be suspended for not less than 5 days, and the court shall impound the treaty fishing identification card of the violator for the duration of the suspension.

§ 256.44 Identification.

(a) Each member of a tribe engaged in treaty commercial fishing activity shall have in his possession at all times a tribal treaty fishing identification card issued pursuant to 25 CFR 256.3.

(b) No member of a tribe shall allow a person who does not possess an identification card issued pursuant to subsection (a) hereof to aid or assist such member while engaged in any treaty fishing activity.

(c) The identification card issued pursuant to subsection (a) hereto shall be shown on demand to any enforcement officer.

(d) Each net used in a treaty fishing activity shall be clearly marked with a buoy showing the identification card number of the user.

§ 256.45 Reports, inspection and sampling.

(a) Each person to whom a tribal treaty fishing identification card has been issued shall file a report of the catch for each calendar month with such person's tribe not later than the tenth day of the month following. This requirement is satisfied if the identification card holder who is in charge of a fishing vessel files a single report listing the names and identification card numbers of all persons who worked on such vessel. The report shall be made on forms provided for that purpose by the tribes and shall indicate the kind and amount of gear, the species and amount of catch, the location of fishing activity, and such other information as the tribes may require. The report shall be submitted regardless of whether the identification card holder engaged in commercial fishing activity during the month. Catch data obtained from this reporting shall be made available by the tribes to the Michigan Department of Natural Resources, the Michigan Agency of the Bureau of Indian Affairs, and the Regional Director of the U.S. Fish and Wildlife Service.

(b) Each catch is subject to reasonable visual inspection of amount and species by an enforcement officer at the place where the catch is offloaded from the fishing vessel. The unpacking of packed fish boxes shall not be required. Each catch is subject to reasonable biological sampling as directed by a tribal or federal biologist. If such sampling requires the taking of the fish or impairs the market value thereof, the reasonable value of the loss shall be reimbursed.

(c) Notwithstanding any other provision of this subpart, assessment fishing may be permitted at any time in any location upon the written permission of a tribal or federal biologist, and under the supervision thereof. Direct assessment fishing by the U.S. Fish and Wildlife Service is not limited by these rules.

§ 256.46 Limitations on fishing activity.

(a) The following areas shall be closed to all treaty fishing activity:

(1) Michigan Fish Management Zone MH-1 in northwestern Lake Huron;

(2) Grand Traverse Bay of Lake Michigan south of 45° north latitude;

(3) Little Traverse Bay of Lake Michigan east of a line from Bayshore to the radio tower northeast of Seven Mile Point;

(4) The Lower St. Mary's River from a line from Point Aux Frenes to the international boundary south and east to Lake Huron, including all of Potagannissing Bay.

(b) The minimum stretched measure mesh size for gill nets shall be as follows:

(1) In Lake Michigan south of a line extending east and west through the Village of Good Hart, 5½ inches for target fishing for whitefish. *Provided, however,* That the minimum size shall be 4½ inches until January 1, 1980.

(2) In Lake Michigan north of the line described in subsection (1) and in Lakes Huron and Superior, 4½ inches for target fishing for whitefish.

(3) In all waters, 2½ inches for target fishing for bloater chubs.

(c) Target fishing activity for various species shall be restricted as follows:

(1) Target fishing for sport species or species listed as threatened or endangered by the Secretary pursuant to the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, is prohibited. Sport species are: Brown Trout, Brook Trout, Rainbow Trout and Atlantic Salmon. Threatened and endangered species include: Longjaw, Deepwater, Shortnose, Blackfin and Shortjaw Ciscos and Lake Sturgeon. Dead sport species incidentally taken in commercial fishing gear during target fishing for other species may be retained for personal or family use but shall not be sold or exchanged. Live sport species and all threatened and endangered species shall be returned to the water.

(2) All other fish species not identified in subsection (1) are species which may be taken by target commercial fishing.

(3) Notwithstanding the provisions of subsection (2), due to the current condition of the stocks target fishing for Lake Trout is prohibited. Dead Lake Trout incidentally taken in commercial fishing gear during target fishing for other species may be retained and sold. Live Lake Trout taken shall be returned to the water. If the catch of Lake Trout in any net lift shall exceed 20% of the total catch by weight, the individual making the lift shall not set nets in the same grid area for a period of ten days.

(d) All treaty fishing activity is prohibited in Lakes Michigan and Huron from November 1 through November 30, and in Lake Superior from October 25 through November 15, of each year.

(e) Treaty fishing activity with a net within ½ mile of the mouth of a river or stream suitable for spawning purposes is prohibited prior to June 1 and after August 31 of each year.

(f) Upon completion of the report on Lake Superior by the Ad Hoc Technical Working Group, the Secretary and the Joint Emergency Regulatory Committee shall issue such further regulations applicable to Lake Superior as are reasonably necessary for conservation purposes.

§ 256.47 Emergency regulations.

(a) There is hereby established a Joint Emergency Regulatory Committee comprised of three members of each tribe. The membership of the committee shall include the tribal chairpersons, the chairpersons of the tribal conservation committees, and one licensed commercial fisher from each tribe selected by the other two members from the respective tribes. This group shall select a chairperson from within its membership who shall retain the right to vote on all matters. The Committee, on the affirmative vote of four members thereof, may adopt emergency regulations binding on the fishers from both tribes in the following circumstances:

(1) When treaty fishing activity in any State statistical district has exceeded 50 percent of the allowable catch as determined by the Ad Hoc Technical Working Group, the Committee may limit or close the area to treaty fishing, require additional catch reporting or monitoring of catch, or take other steps, as the situation may warrant.

(2) If the State of Michigan closes any area to all non-treaty fishing activity, the Committee shall examine the reasons for such closure and may close that area or otherwise limit tribal fishing.

(3) If credible information is received indicating that tribal fishing activity may be harvesting fish that exceed the tolerance levels for contaminants set by the Food and Drug

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Administration, the Committee may take action to assure that the fish are pre-tested before being marketed or may close that portion of the fishing activity which might otherwise bring contaminated fish into the market.

(4) If requested by the Secretary to act in response to any other emergency situation the Committee may promulgate appropriate regulations as required.

(b) The Area Director of the Bureau of Indian Affairs in Minneapolis, Minnesota, is authorized to make emergency changes in these regulations, including closures and restrictions or the relaxation thereof, to meet conditions not foreseen at the time these regulations were issued or when in-season adjustments or closures are necessary for conservation purposes. The tribes shall be consulted before promulgation of emergency regulations, and the Joint Emergency Regulatory Committee shall participate in developing emergency changes to the regulations where practicable. Differences over in-season regulatory adjustments shall be resolved by the tribal chairpersons and the Field Solicitor, Twin Cities, Minnesota. However, such referral shall not be cause for delay in promulgation of in-season regulatory adjustments should such adjustments be required on an emergency basis to meet conservation needs. Emergency regulations are effective upon their issuance or according to their terms and remain effective until modified or rescinded by the Area Director or terminated by their terms.

§ 256.48 Other laws and regulations.

Nothing in this subpart shall be deemed to:

(a) Authorize or accomplish any of the actions set forth in 25 CFR 256.7 (a) through (f);

(b) Deprive a tribe of the power to promulgate separate and different tribal regulations on fishery related matters where for conservation purposes there is no reason for uniformity, provided that such regulations are consistent herewith;

(c) Deprive a tribe of the power to promulgate separate and different regulations of fishing activity which are more restrictive than these joint regulations and consistent herewith;

(d) Authorize any State court to exercise jurisdiction which it does not otherwise possess.

§ 256.49 Forcible assault on enforcement officer.

No person engaged in fishing activity under this subpart shall assault, resist, oppose, impede, intimidate, or interfere with an enforcement officer engaged in enforcing this subpart.

§ 256.50 Term of regulations.

The regulations in this subpart take effect on November 16, 1979 and expire on January 1, 1981.

PART 257—RESALE OF LANDS WITHIN THE BADLANDS AIR FORCE GUNNERY RANGE (PINE RIDGE AERIAL GUNNERY RANGE)

Sec.

257.1 Purpose.
257.2 Definitions.
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257.4 Notice to former owners.
257.5 Special notice to former Indian owners.
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257.9 Lands formerly held subject to restrictions against alienation.

AUTHORITY: 5 U.S.C. 301, R.S. 463 and 465; 25 U.S.C. 2; 16 U.S.C. 3; 82 Stat. 663.

SOURCE: 34 FR 9985, June 28, 1969, unless otherwise noted.

§ 257.1 Purpose.

The regulations in this part govern the reacquisition by former Indian and non-Indian owners of lands, or interests therein, acquired by the United States of America as a part of the Badlands Air Force Gunnery Range, sometimes referred to and known as the Pine Ridge Aerial Gunnery Range. The regulations also govern the acquisition by former Indian owners of life estates in national monument lands formerly owned by them and the acquisition of lieu lands when lands formerly owned by them are not available or are not desired by them for reacquisition. The legislative authority for reacquisition of lands or interests

therein by former owners is the Act of August 8, 1968 (Public Law 90-468; 82 Stat. 663).

§ 257.2 Definitions.

(a) "Secretary" means the Secretary of the Interior or his duly authorized representative.

(b) "Superintendent" means the officer in charge of the Pine Ridge Indian Agency, Pine Ridge, S. Dak.

(c) "Act" means the Act of August 8, 1968 (Public Law 90-468; 82 Stat. 663).

(d) "Gunnery Range" means the area on the Pine Ridge Indian Reservation in South Dakota that was acquired by the United States for use of the Air Force commonly known as the Pine Ridge Aerial Gunnery Range or the Badlands Air Force Gunnery Range.

(e) "Monument" means the Badlands National Monument as enlarged by section 1 of the Act of August 8, 1968 (Public Law 90-468).

(f) "Tribe" means the Oglala Sioux Tribe of Indians of South Dakota.

§ 257.3 Eligibility to purchase.

(a) Any former owner of a tract of land or interest in a tract of land, whether title was held in trust or in fee, which was acquired by the United States as a part of the Gunnery Range may purchase such tract pursuant to the provisions of the Act and the regulations set forth in this part: *Provided*, Said tract has been declared excess to the needs of the Department of the Air Force, has been transferred to the administrative jurisdiction of the Secretary of the Interior, and is not within the boundaries of the Monument or within that portion of the Gunnery Range retained for use of the Department of the Air Force.

(b) If a former owner is deceased and is survived by a spouse, the spouse may purchase under the same terms and conditions as the former owner except that if the former owner was an Indian whose land was held in trust and his surviving spouse is a non-Indian, the title to said tract shall be conveyed to the non-Indian spouse in fee simple status.

(c) If the former owner is deceased and the spouse is also deceased, the children of the former owner may repurchase the tract.

(d) If the former owner is not survived by a spouse or children there exist no repurchase rights involving the tract.

(e) Not more than five former owners may join in purchasing a tract of land. "Former owner" means each person from whom the United States acquired an interest in a tract of land, or if such person is deceased, the surviving spouse, or if such spouse is deceased, his children. If more than five former owners apply to acquire a tract, the Superintendent shall notify them in writing that it will be necessary for them to agree among themselves as to the five or less of them who shall acquire the tract. If agreement among the owners is obtained, those individuals who are to acquire the tract shall then file an application to purchase it. The matter of reaching agreement among the owners is the sole responsibility of said owners and not the responsibility of the Department of the Interior and/or the Bureau of Indian Affairs to participate in the negotiations between the owners. If the former owners fail to reach such an agreement, all applications for the tract shall be rejected.

§ 257.4 Notice to former owners.

After publication of these regulations, there shall be published in the FEDERAL REGISTER notice that certain described lands and interests in lands have been transferred to the administrative jurisdiction of the Secretary and are available for repurchase by the former owners pursuant to section 3(b) of the Act. Upon transfer of administrative jurisdiction over lands that may thereafter be declared excess to the needs of the Department of the Air Force and acceptance by the Secretary, notice of such transfer shall be published in the FEDERAL REGISTER. No attempt shall be made to notify each individual former non-Indian owner personally, but the transfer of jurisdiction to the Secretary may be further publicized by the publishing of notice in a local newspaper of general circulation.

§ 257.5 Special notice to former Indian owners.

(a) The Superintendent shall notify the former Indian owners, in writing, at their last known addresses of their right to repurchase the tracts formerly owned by them in those instances where the tracts are outside of the boundaries of the Monument and are outside of the boundaries of the area of the Gunnery Range retained by the Department of the Air Force. Such notice shall include (1) the legal description, (2) the purchase price thereof, (3) the minimum amount of down payment required, (4) a recital that balance of purchase price may be paid in 20 annual installments, (5) the annual rate of interest on unpaid balance, (6) information whether title is to be taken in trust or in fee, and (7) the date by which the executed application to purchase must be received in the office of the Superintendent. A form of application for execution by the former owners shall accompany said notice, said application to include the legal description of the land, purchase price and other pertinent information.

(b) In those instances where the tracts of land or portions thereof are within the boundaries of the area of the Gunnery Range retained by the Department of the Air Force, the Superintendent shall notify the former Indian owners, in writing, at their last known addresses that they may elect to purchase available tracts of land in lieu of the lands formerly owned by them, said lieu lands to be of substantially the same value as the tracts originally owned by them. Such notice shall also advise said former owners that they may, as an alternative, elect to purchase the tracts formerly owned by them at such time as the tracts may be declared excess to the needs of the Department of the Air Force and transferred to the Secretary of the Interior. As to this alternative, no promise or prediction may be made as to when, or whether, the land may eventually become surplus to the needs of the Department of the Air Force, and the notice shall specifically so state. Such notice shall include (1) the legal description of the land formerly owned by them (2) the purchase price of the lieu land which price shall be computed on the same basis as though the original tract were available, (3) the minimum amount of down payment required, (4) a recital that balance of purchase price may be paid in 20 annual installments, (5) the annual rate of interest on unpaid balance, (6) information whether title is to be taken in trust or in fee, and (7) the date by which election to purchase lieu lands or wait until lands formerly owned by them are declared excess must be received in the office of the Superintendent. The notice shall be accompanied by a form for execution by the former owner whereby said owner elects to purchase lieu lands or to repurchase the tract formerly owned by said owner when it is declared excess.

(c) In those instances where a tract of land or portion thereof is within the boundaries of the Monument, the Superintendent shall notify the former Indian owner, in writing, at his last known address that he may elect to acquire a life estate in such tract or portion thereof at no cost but subject to the restrictions on use referred to under "Conveyance Documents" (section 257.7). Such notice shall include the legal description of the lands formerly owned by him upon which he may acquire a life estate. The notice shall also inform the former owner that he may elect to purchase any available tract of land in lieu of the lands formerly owned by him, said lieu lands to have substantially the same values as the tract originally owned by him. Such notice shall include (1) the purchase price of the lieu land which price shall be computed on the same basis as though the original tract were available for purchase, (2) the minimum amount of down payment required, (3) a recital that balance of purchase price may be paid in 20 annual installments, (4) the annual rate of interest on unpaid balance, (5) information whether title is to be taken in trust or in fee, and (6) the date by which the election to acquire the life estate or lieu lands must be received in the Office of the Superintendent. Such notice shall be accompanied by a form for execution by the former owner whereby said owner

elects to acquire a life estate in the lands formerly owned by said owner or elects to purchase lieu lands.

§ 257.6 Applications by former owners.

(a) Applications by former Indian owners to purchase lands formerly owned by them, or to purchase lieu lands, or to take a life estate in a tract of land within the Monument area should be made on forms furnished by the Superintendent and filed within the period specified in section 3(b) (5) of the Act. Such applications shall be filed in the Office of the Superintendent.

(b) A former non-Indian owner may file application to purchase land pursuant to subsection 3(b) of the Act within 1 year from the date notice is published in the FEDERAL REGISTER that the land he formerly owned has been declared excess to the needs of the Department of the Air Force and has been transferred to the Secretary. Such application shall be filed in the Office of the Superintendent. The applicant shall furnish proof of his ownership or the ownership of his predecessor in interest at the time of the acquisition of the land by the United States. Upon receipt of an application to purchase and proof of ownership the Superintendent shall cause the land to be appraised and thereafter he shall inform the applicant in writing of the fair market value of the tract which shall be the purchase price, the minimum amount of down payment required, that the balance of the purchase price may be paid in 20 annual installments, and the annual rate of interest on the unpaid balance.

§ 257.7 Conveyance documents.

(a) Where there is an election by a former Indian owner of a tract of land within the monument boundary to acquire a life estate in such tract at no cost the following types of provisions and restrictions shall be applicable to the use thereof:

(1) Agricultural uses are permitted. Only those commercial activities associated with normal agricultural operations would be allowed.

(2) Construction or reconstruction of any roads to the property, including locations and materials used, are subject to approval by the National Park Service.

(3) Mining activities of all kinds are prohibited inasmuch as the United States retains all mineral rights.

(4) Residential and other facilities necessary for, or incidental to, ranching and other agricultural purposes are permitted. This includes, but is not limited to, barns, sheds, fences, stock dams, wells utilizing surface or subsurface water, and other needed access accessory structures.

(5) The cutting of native trees, except for firewood for the personal use of the grantee, his family or assignee, is prohibited unless determined by the National Park Service to be essential to the permitted use of the tract.

(6) All improvements and structures are subject to removal upon termination of the life estate or they shall be deemed to become the property of the United States. The family or assignee of the grantee shall have a reasonable time to vacate the premises upon termination of the life estate and may harvest annual crops planted during the tenure of the estate.

(7) Water rights owned by the United States in the premises remain vested in the United States, but the grantee has a right to reasonable use of the water.

(8) Grantee must observe and adhere to all applicable Federal, State, and local laws and regulations, including Federal laws and regulations for the protection of the black-footed ferret and other wildlife in the Monument. The United States reserves the right to enter upon the conveyed lands to assure such compliance and for the exercise of any other rights and privileges reserved to it.

(9) The conveyed premises must be kept in a neat and orderly condition and no waste or injury may be committed to the land. Pollution of water on or adjacent to the property is prohibited.

(10) Reasonable precautions must be taken to prevent, suppress, and extinguish forest, brush, grass, and other fires on the property.

(11) Grantee may not claim damages for injury by or against the United

States which might be directly attributable to existence of the Monument.

(12) Other provisions deemed necessary by the National Park Service in individual circumstances may be included in the conveyance document.

(b) When title to the land being acquired is to be taken in trust for the purchaser and the purchase is effected by deferred payments as authorized in section 3(b)(2) of the Act, a sale contract shall be executed by the purchaser and the Secretary. The down payment shall be not less than $100 or 20 per centum of the purchase price, whichever is less. The purchaser shall be entitled to a credit of a pro rata share of the grazing fees collected by the United States for use of the land during the grazing year in which the sale contract is executed, which credit shall be applied as all or a part of the down payment for the land being purchased. In the event the proportionate share of the grazing fees credited to the purchaser is less than the required down payment, the purchaser shall pay the balance of the down payment in cash, or by certified check, cashier's check, money order, or U.S. Treasury check, payable to the Bureau of Indian Affairs at the time the sale contract is executed. Upon execution of the contract by the Secretary, a deed shall be prepared and executed by the Secretary conveying title to the land to the United States in trust for the purchaser. When the sale contract and deed are executed, the balance of the proportionate share of the grazing fees, if any, due the purchaser shall be paid to him and the down payment shall be deposited in the U.S. Treasury to the credit of the United States as general fund receipts. All subsequent installment payments shall be deposited in a like manner to the credit of the United States. The sale contract shall include (1) the legal description of the land, (2) the purchase price, (3) the amount of down payment, (4) the amount of annual principal installment payments, (5) the annual rate of interest on unpaid balance, (6) the due dates of annual installments, (7) a recital that the unpaid balance is a lien against the land and against all rents, bonuses and royalties received therefrom, (8) a recital that a delinquency of 90 days in making annual installment payments will subject the contract to foreclosure with loss of all payments theretofore made thereon, and (9) a recital that upon payment being made in full the deed to the United States in trust for the purchaser will be delivered to the purchaser.

(c) If title to the tract is acquired in a trust status and full payment therefor is made by the purchaser at the time the application for purchase is approved, the title shall be conveyed to the United States of America in trust for the purchaser by a deed executed by the Secretary.

(d) If the purchaser is to acquire the tract in a fee status and the purchase is effected by deferred payments as authorized in section 3(b)(2) of the Act, the title shall be conveyed to the purchaser in a fee status by a deed executed by the Secretary. The purchaser shall execute a mortgage naming the United States as mortgagee and shall execute promissory notes for the annual installment payments with the annual rate of interest set forth therein. The deed and mortgage shall be recorded in the office of the register of deeds of the county in which the land is situated, the recording costs to be borne by the purchaser. Upon payment of the full amount of the mortgage a satisfaction of mortgage shall be executed by the Secretary and delivered to the purchaser who shall be responsible for recordation thereof in the office of the register of deeds.

(e) If the purchaser is to acquire the tract in a fee status and full payment therefor is made by the purchaser at the time the application for purchase is approved, the title shall be conveyed to said purchaser in a fee status by a deed executed by the Secretary. The purchaser shall be responsible for recordation of the deed in the office of the register of deeds of the county in which the land is situated.

(f) Each deed executed pursuant to paragraphs (c), (d), and (e) of this section shall contain a provision that if the tract is offered for sale by the purchaser within a period of 10 years from the date of said deed, the tribe shall be notified in writing that the tract is being offered for sale and of the terms of the offer and said tribe

shall have a period of 60 days to exercise a right of first refusal to purchase such tract upon the terms set forth in the notice.

(g) All sale documents referred to in this section shall be recorded in the office of the Bureau of Indian Affairs having custody of the land title records of the Pine Ridge Indian Reservation pursuant to Part 120, Title 25, Code of Federal Regulations.

§ 257.8 Selection of lieu lands.

(a) Lieu lands which may be selected for purchase by former Indian owners whose lands are within the boundaries of the area retained for use by the Department of the Air Force or are within the boundaries of the Monument are defined as (1) those lands heretofore acquired by the United States for use of the Air Force Gunnery Range which are outside the boundaries of the Monument and outside the boundaries of the area retained for use by the Department of the Air Force which are not selected for repurchase by former owners within 1 year from date of publication of the notice prescribed in section 3(b)(5) of the Act, and (2) all of the submarginal lands acquired by the United States under authority of the National Industrial Recovery Act of 1933 and subsequent relief acts, within the Pine Ridge Indian Reservation, except those submarginal lands within the area retained for use by the Department of the Air Force or within the Monument, administrative jurisdiction over which was transferred to the Secretary of the Interior by Executive Order No. 7368, dated April 15, 1938.

(b) The former Indian owners whose lands are within the boundaries of the area retained for use by the Department of the Air Force or are within the boundaries of the Monument may elect to purchase lieu lands of substantially the same value pursuant to section 4(b) and section 4(c) of the Act. Inasmuch as identification of all of the lands from which lieu selections may be made cannot be determined until the time has expired for former owners of lands outside of the area used by the Department of the Air Force and outside the boundaries of the Monument to purchase the tracts formerly owned by them, former owners who have filed an election to purchase lieu lands within 1 year from the date of publication of the notice prescribed in section 3(b)(5) of the Act, shall be deemed to have filed a timely application to purchase notwithstanding the fact that a specific tract of land has not been designated in said election.

(c) Upon the expiration of 1 year from date of publication of the notice prescribed in section 3(b)(5) of the Act, the Superintendent shall prepare a complete list of all lands available from which selections of lieu lands may be made. The Superintendent shall also prepare a list of all former owners who elected to purchase lieu lands, numbering them consecutively without regard as to date of receipt of such election. The numbers shall then be placed on separate uniform slips of paper and placed in a bowl. The numbers will then be withdrawn from the bowl and a record made of the order in which they were withdrawn. The owner of the first number withdrawn shall be afforded the first opportunity to select lieu lands. The owners of lands represented by the following numbers will be afforded an opportunity to select lieu lands in the priority in which their numbers were drawn.

(d) When all selections of lieu lands have been made as provided in paragraph (c) of this section, the Secretary shall determine the comparability of the lands originally owned and the lieu selections. If the lieu selections are not substantially the same value as the lands originally owned, the owners shall be afforded an opportunity to make other selections which are substantially the same value.

(e) To determine whether the former Indian owned land and the selected lieu land in each case are of substantially the same value, the consideration paid by the United States for each tract may be accepted as indicative of the value of each tract at the time it was acquired. If information as to the price paid for any specific tract is not available, or if for any reason it is concluded that the consideration paid by the United States for the land is not acceptable evidence as

to value for this purpose, the Secretary shall cause the tracts to be appraised to determine their comparability. The appraisals of lands shall be made on the basis of current market values. The lands shall be considered to be substantially the same value if the differences in values do not exceed 10 percent of the greater value.

§ 257.9 Lands formerly held subject to restrictions against alienation.

Former Indian owners who held title to the lands which were acquired for the gunnery range subject to restrictions against alienation without the approval of the Secretary of the Interior shall be conveyed title to the reacquired lands in a trust status in the same manner as though they had held trust title to the lands taken.

PART 258—INDIAN FISHING—HOOPA VALLEY INDIAN RESERVATION

Sec.

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258.17 Hoopa Valley Indian Reservation Court of Indian Offenses.

AUTHORITY: 43 U.S.C. § 1457, 25 U.S.C. § 2 and § 9, 25 U.S.C. § 262, and the Reorganization Plan No. 3 of 1950 (65 Stat. 1262).

SOURCE: 44 FR 17148, Mar. 20, 1979, unless other noted.

§ 258.1 Purpose.

(a) The regulations contained in this Part govern fishing by eligible Indians on the Hoopa Valley Indian Reservation. The purpose of these regulations is to protect the fishery resources and to establish procedures for the exercise of the fishing rights of Indians of the Reservation until a Reservation-wide management mechanism is established with the capability to manage and regulate the Indian fisheries on the Reservation. These regulations are intended to promote reasonably equal access to the fishery resources of the Reservation by all Indians of the Reservation, and to assure adequate spawning escapement.

(b) The limited extent to which regulation is undertaken by this Part is not intended nor should it be construed as a conclusion that the Secretary does not have the authority to take additional measures to protect fishery resources on the Reservation if it is later determined that such measures are necessary.

§ 258.2 Term of regulation.

These regulations become effective on April 1, 1979 and continue in effect until rescinded. The regulations published by the Department of the Interior on Thursday, July 13, 1978, and amendments thereto, are superseded by these regulations and are rescinded as of April 1, 1979.

§ 258.3 Application.

(a) The provisions of these regulations and all in-season adjustment orders issued under them apply to the waters of the Klamath and Trinity Rivers and their tributaries within the exterior boundaries of the Hoopa Valley Indian Reservation.

(b) Any person who is not an Indian of the Reservation as determined under § 258.5 of this Part is not regulated under this Part at this time and must therefore comply with all other applicable laws when fishing on the Hoopa Valley Indian Reservation.

(c) Children 10 years of age and under shall not be subject to these regulations. However, adults in the company of such children shall be held liable for the compliance with these regulations by such children.

§ 258.4 Definitions.

(a) *Channel means:* The wetted area from bank to bank.

(b) *Commercial fishing means:* The taking of fish or fish parts with the

intent to sell or trade them or profit economically from them.

(c) *Consumptive or subsistence fishing means:* The taking of fish to be eaten by Indians of the Reservation or their immediate families.

(d) *Drift net (pole net) means:* A gillnet which is not staked, anchored or weighted, but drifts free.

(e) *Eligible Fisher—Eligible Indian means:* Any Indian who is determined to be an Indian of the Reservation under § 258.5 of this Part.

(f) *Enforcement Officer means:*

(1) Any enforcement officer of the Department of the Interior;

(2) Any U.S. Marshall;

(3) Any tribal enforcement officer;

(4) Any person deputized to enforce these regulations.

(g) *Fish, fishing means:* The fishing for, catching, or taking or the attempted fishing for, catching, or taking of any salmon, steelhead or sturgeon within the exterior boundaries of the Reservation.

(h) *Fishers identification card means:* The identification card issued by the Bureau of Indian Affairs identifying the holder as a person eligible to fish as an Indian of the Reservation. The identification card shall include the name, basis for eligibility to fish, address, birthdate, color of hair, color of eyes, height, weight, identification number of the holder, the holder's photograph, and the disclaimer provided in Section 258.5.

(i) *Fishing gear means:* Any boat, motor, gillnet, seine, hook-and-line, and other apparatus used for taking fish.

(j) *Identification number means:* The identification number assigned by the Bureau of Indian Affairs identifying the eligible fisher by number. This number is to be obtained by the eligible fisher and placed on his or her fishing gear where required by these regulations.

(k) *Gillnet means:* A flat net suspended vertically in the water with meshes that allow the head of a fish to pass but entangle the fish when it seeks to withdraw.

(l) *Hand dip net means:* A section of netting distended by a rigid frame operated by a process commonly recognized as dipping. Such nets may be of any size.

(m) *Reservation means:* The Hoppa Valley Indian Reservation as extended, including those parts known as the "Extension" and the "Hoopa Square."

(n) *Secretary means:* Secretary of the Interior or his designated representative.

(o) *Set-net means:* A gillnet which is staked or anchored or weighted at each end so that it does not drift free.

(p) *State enforcement officer means:* Any official of the State of California who is authorized to enforce state fish and game laws.

(q) *Stretched measure means:* The distance between the inside of one knot and the outside of the opposite (vertical) knot on one mesh of a gillnet. Measurement shall be taken when the mesh is stretched vertically while wet, by using a tension of ten (10) pounds on any three (3) consecutive meshes, then measuring the middle mesh of the three while under tension.

(r) *Subsistence or consumptive fishing means:* The taking of fish to be eaten by Indians of the Reservation or their immediate families.

§ 258.5 Eligible Fisher—Eligible Indian.

(a) Enrolled members of the Hoopa Valley Tribe or plaintiffs in the case entitled *Jessie Short el al.* v. *United States,* Ct. Cls. No. 102-63, may exercise fishing rights under the authority of this Part. Also, persons who are allottees or direct descendants of allottees on the Hoopa Valley Indian Reservation, who currently and for eight (8) of the past ten (10) years have resided on the Reservation or within 60 miles thereof are eligible to exercise Indian fishing rights within the Reservation boundaries. Such persons are eligible fishers for the purposes of these regulations only.

(b) Disclaimer: Determination of eligibility to fish under paragraph (a) of this section shall not be considered evidence of entitlement or lack of entitlement or in any way affect eligibility for enrollment or other tribal benefits or rights on the Hoopa Valley Indian Reservation.

(c) An eligible Indian as determined under paragraph (a) of this section

who allows an ineligible person to assist in an Indian fishery on the Reservation shall be subject to the penalties set out in § 258.15(a).

§ 258.6 Fishers identification cards required.

(a) Persons qualifying as an "Eligible Fisher" or "Eligible Indian" under § 258.5 shall obtain an Indian fishers identification card and have it in his or her possession before exercising any Indian fishing rights or transporting fish caught in the exercise of Indian fishing rights on the Reservation.

(b) Penalties: Eligible Indian fishers who do not have their identification card in their possession while fishing or transporting fish may be presumed to be ineligible to exercise fishing rights as an Indian of the Reservation and, therefore, subject to all other applicable laws. In the event such an Indian subsequntly shows proof of eligibility, he or she shall be subject to the penalties prescribed in § 258.15 for the failure to have an identification card in his or her possession.

(c) Fishers Identification Card: A fishers identification card shall be issued by the Bureau of Indian Affairs Hoopa Agency to applicants who fulfill eligibility requirements stated in § 258.5(a). The card shall show the name, basis for eligibility to fish, address, birthdate, color of hair, color of eyes, height, weight, identification number, and holder's photograph, and it shall note the disclaimer stated in § 258.5(b). Such cards may be obtained by contacting the Agency Superintendent, P.O. Box 367, Hoopa, California, 95546 (916/625-4285). The card shall be signed by the card holder. The card shall be countersigned by the authorized official of the Bureau of Indian Affairs certifying that the card holder is recognized as eligible to exercise Indian fishing rights on the Reservation.

§ 258.7 Identification of gear.

(a) At the time an eligible fisher applies for a fishers identification card he or she shall be assigned an identification number and shall be required to place the identification number on all of his or her nets used for fishing in the exercise of Indian fishing rights on the Reservation. Each net shall be marked on the first front, middle, and last end cork of each net used by each eligible fisher. Each net must have floats or corks attached which shall be floating and visible at all times.

(b) All fishing nets shall be conspicuously marked so that the fisher's identification number may be read without removing the gear from the water. In the absence of proof to the contrary, unmarked fishing nets shall be presumed not to be used in the exercise of the fishing rights of Indians of the Reservation and will be subject to seizure by a law enforcement officer.

§ 258.8 Permissible and Prohibited Fishing.

(a) The Hoopa Valley Indian Reservation is open to the taking of salmon, steelhead and sturgeon by eligible Indians for subsistence and ceremonial purposes unless specifically closed by these regulations or by properly adopted in-season and emergency regulations promulgated hereafter. Fishing shall be permitted seven days per week and 24 hours per day except that all nets must be out of the water between the hours of noon and 4:00 p.m. on Monday of each week.

(b) Fishing is permitted under these regulations for subsistence and ceremonial purposes only.

(c) Commercial fishing is prohibited by these regulations.

(d) Fish caught on the Hoopa Valley Indian Reservation may not be sold.

(e) *Restrictions on fishing:*

(1) Drift-net fishing shall not be permitted below the Highway 101 Bridge.

(2) No eligible fisher may use more than two gillnets, the combined length of which shall not exceed one hundred (100) feet.

(3) Set-nets or drift-nets may be joined end-to-end so as to form a single straigth-line net as long as the new length does not exceed 100 feet.

(4) Both ends of a set-net shall be anchored or staked at all times it is in use.

(5) No set-net may be placed in the Klamath River or Trinity River in such a way that it covers more than one-third (⅓) of the distance across the wetted area of any channel.

(6) No set-nets may be placed within twenty (20) feet of the mouth or across the mouth of any tributary stream of either the Klamath or Trinity Rivers. No set-nets may be placed in any tributary stream of either the Klamath or the Trinity River.

(7) No set-nets may be placed within five hundred (500) feet in any direction of the confluence of the Klamath and Trinity Rivers.

(8) The use of wire, fencing materials, traps, snag gear, explosives, stunning agents or caustic or lethal chemicals in any form is expressly prohibited in all fisheries.

(f) *Set-net Locations:* Set-net locations shall be determined by the individual Indian fishers in accordance with tradition and custom and in a manner consistent with the provisions of this § 258.8. Disputes over set-net locations are to be resolved between the parties. If no satisfactory resolution is reached then all disputes are to be referred by the parties to elders or knowledgeable adults of the community for the particular area in which the unresolved dispute takes place.

(g) *Dip-Net and Hook-and-Line Fishing:* Eligible Indians may engage in dip-net fishing or hook-and-line fishing at all times on the Reservation except when fishing is prohibited for all persons by emergency regulations promulgated hereafter for conservation purposes. Fishers identification cards shall be carried by all eligible Indians when engaged in dip-net or hook-and-line fishing.

(h) *Special Fishing for Rest Home on Hoopa Square:* Two gillnets which are used in conformity with these regulations may be used for fishing for the Rest Home on the Hoopa Square. Such gillnets shall be clearly marked with a number assigned by the BIA Agency Office at Hoopa upon registration of the nets. An eligible Indian of the Reservation shall tend these nets.

(i) *Research and Test Fisheries:* Fish capture techniques including trapping, netting and electrofishing may be employed by biologists of fisheries management agencies working on the Rivers for biological research, enhancement or other resource management purposes. Designated Indians of the Reservation may observe research and test fisheries upon making arrangements with the agency conducting the research activity.

§ 258.9 Catch Marking.

All fish transported outside of the exterior boundaries of the Reservation shall be clearly marked on the tail by an "X" in indelible dye or by clipping or cutting off the top half of the tail fin. The bottom half of the tail fin may not be removed until the fish have arrived at the location where they are to be consumed or preserved for consumption.

§ 258.10 Consultation.

The BIA Agency Superintendent or his designated representative shall generally hold meetings every other week during the fishing seasons, rotating among Klamath, Hoopa and Pecwan, to consult with Indians of the Reservation on the status of the fishery, ocean harvests, the sport fishery, Indian harvests, and such specifics as proposed in-season adjustments to the regulations, as appropriate. At the end of each presentation, comments will be received from those in attendance. A written summary of those comments shall be maintained as a record by the Agency Superintendent or his designated representative.

§ 258.11 In-Season and Emergency Regulations.

(a) The Director of the U.S. Fish and Wildlife Service or his specifically authorized delegate is authorized to make in-season and emergency changes to the regulations when necessary to ensure proper management of the fisheries of the Klamath and Trinity Rivers. This authority includes the following powers:

(1) To close all or part of an Indian fishery when, in the Director's judgement, a closure is necessary to meet conservation needs.

(2) To re-open all or part of an Indian fishery when, in the Director's judgment that action will not jeopardize spawning escapement.

(b) In-season or emergency regulations shall be effective 24 hours after publication in the *Eureka Times Standard.* They shall stay in effect until modified or rescinded by the Di-

rector. Failure to complete subsequent provisions of this section shall not affect the validity of any in-season or emergency adjustment.

(c) *Notification of in-season or emergency adjustments:* (1) The Superintendent of the Hoopa Agency shall be responsible for having each emergency or in-season adjustment to the fishing regulations published in the *Eureka Times Standard* as a legal notice at least twenty-four (24) hours before it is to become effective, and in the *Del Norte Triplicate, Klamity Kourier,* and the *Arcata Union* as promptly as possible.

(2) The BIA Area Director shall have each in-season adjustment or emergency regulations published in the FEDERAL REGISTER as promptly as possible.

(3) The Superintendent of the Hoopa Agency shall attempt to post each emergency or in-season adjustment at least twenty-four (24) hours before it is to become effective at each of the following locations:

(i) Hoopa Post Office.
(ii) Hoopa Shopping Center.
(iii) Hoopa Agency, Bureau of Indian Affairs.
(iv) Willow Creek Post Office.
(v) Willow Creek Public Library.
(vi) Weitchpec Bulletin Board, Pierson's Store.
(vii) Weitchpec Elementary School.
(viii) Pecwan Church.
(ix) Pecwan Elementary School.
(x) Requa Community Center.
(xi) Resighini Rancheria Office.
(xii) Klamath Post Office.
(xiii) Requa Inn.
(xiv) U.S. Coast Guard Station, Requa.
(xv) Klamath Grocery Store.
(xvi) Klamath Field Office, Bureau of Indian Affairs.
(xvii) Bureau of Indian Affairs, Eureka.
(xviii) Bureau of Indian Affairs, Redding.

(4) If the owners of the property at the following locations so desire, a courtesy copy of the notice will be provided:

(i) Hoopa Tribal Office.
(ii) Young's Bar.
(iii) Dad's Camp.
(iv) Chub's Camp.
(v) Gensaw's Landing.
(vi) Notchkeo.
(vii) Terwar.
(viii) Bacon's Camp.
(ix) Sim's Camp.
(x) Mattz's Dock.
(xi) Others that may so request.

§ 258.12 Fish catch reporting.

(a) All fishers shall allow access to harvested fish to biologists, enforcement officers and Indian trainees for the purpose of monitoring the harvest and to check for compliance with these regulations.

(b) Fish catch data shall be compiled and summarized by the U.S. Fish and Wildlife Service and made available upon request. It will not be permissible to release catch information for individual fishers of the Reservation.

(c) U.S. Fish and Wildlife Service will compile in-season catch data from information obtained from fishers spot checks, landing counts, creel census, and from other information collected by state and federal officials.

§ 258.13 Identification of persons fishing.

Each eligible fisher shall produce for examination the applicable Indian fishers identification card required under these regulations upon demand of an enforcement officer.

§ 258.14 Enforcement.

Eligible Indians who violate these regulations or any in-season or emergency adjustment promulgated under these regulations shall be subject to prosecution before the Court of Indian Offenses for the Hoopa Valley Indian Reservation. The pertinent provisions of 25 CFR Part 11 and the Indian Civil Rights Act of 1968 apply.

(a) *Citations:* Law enforcement officers may issue citations to any eligible Indian the officer believes has committed a violation of the regulations of this Part. Such citation shall state when and where the person cited is expected to appear in court and the offense with which the person is charged.

(b) *Seizure: Confiscation of Fishing Gear and Fish:* (1) Any net or other fishing gear used in violation of these regulations and any fish caught or possessed in violation of these regula-

tions may be seized by a law enforcement officer.

(2) When a net or other fishing gear is seized and the owner is not present or is unknown to the enforcement officer, the officer shall, without unreasonable delay, commence proceedings in the Court of Indian Offenses by petitioning the Court for a judgment forfeiting the fishing gear or fish.

(3) Upon the filing of such petition, the clerk of the Court shall set out details of the seizure citing time, place and location of such seizure and fix a time for a hearing and cause notices for unattended gear or fish to be posted and published.

Notices shall be posted for fourteen (14) days at both courthouses of the Court of Indian Offenses and the del Norte County Court house and be published in local news media having circulations on the Reservation for a period of five (5) days. Notices will set forth the substance of the petition and the time and place of such seizure and hearing.

(4) Any fishing gear or fish ordered forfeited shall be disposed of as directed by the Secretary.

(5) Any person who satisfies the court that he or she is the owner of any fishing gear or fish seized under this section may intervene in the forfeiture proceeding on behalf of the fishing gear or fish.

(c) *Arrests:* (1) (i) Each judge of the Court of Indian Offenses is authorized to issue warrants for the arrest of an eligible Indian.

(ii) No arrest warrant may be issued except upon a written affidavit based upon reliable information or belief alleging that there is probable cause to believe that the person to be arrested has violated the regulations of this Part.

(2) A law enforcement officer may arrest any individual without a warrant if that officer has probable cause to believe that person is committing a violation of the regulations of this Part in the officer's presence.

(3) Any eligible Indian charged with a violation of the regulations of this Part may be admitted to bail in an amount set by the Court of Indian Offenses. The Court may release a prisoner on his or her own recognizance in an appropriate case.

§ 258.15 Penalties.

(a) Any eligible Indian who violates §§ 258.3(c), 258.5(c), 258.8 (a), (e), or (g), 258.11 (a) or (b) of this Part shall be subject to the following penalties: (1) *1st Violation of the Regulations of this Part.* No more than $200 or two (2) months in jail or suffer suspension of tribal fishing rights for thirty (30) days during the fishing season or any combination of the above.

(2) *2nd Violation of the Regulations of this Part.* Not more than $400 or four (4) months in jail or suffer suspension of tribal fishing rights for sixty (60) days during the fishing season or any combination of the above.

(3) *3rd or Subsequent Violations of the Regulations of this Part.* Not more than $500 or six (6) months in jail or suffer suspension of tribal fishing rights for ninety (90) days during the fishing season or any combination of the above.

(b) Any eligible Indian who violates §§ 258.8 (b), (c), or (d), or 258.9, shall be fined not more than $500 or sentenced to jail for a period not to exceed six (6) months or both.

(c) Any eligible Indian who violates § 258.7 of this Part shall be fined not more than $250 or suffer suspension of tribal fishing rights for up to ninety (90) days during the fishing season or both.

(d) Any eligible Indian who violates § 258.12(a) of this Part shall be fined not more than $250 or suffer suspension of tribal fishing rights for up to ninety (90) days or both.

(e) Any eligible Indian who refuses to obey a lawful order of the Court of Indian Offenses (including an order suspending fishing rights) shall be fined not more than $100 or sentenced to jail for a period not to exceed thirty (30) days or both.

(f) Any eligible Indian who violates § 258.6(a) shall be fined not more than $100 or sentenced to jail for a period not to exceed thirty (30) days or both.

(g) Where appropriate the judge, in his or her discretion, may order an eligible Indian, in lieu of a jail sentence, to work up to twenty hours a week

without compensation for a term to correspond to the probable term of a jail sentence, in fisheries enhancement work on the Reservation. Such work will be conducted under the supervision of the BIA or the Fish and Wildlife Service.

§ 258.16 Forceable Assault and Impeding a Law Enforcement Officer.

Any eligible Indian who forcibly assaults, resists, impedes, or interferes with a law enforcement officer engaged in the enforcement of the regulations of this Part shall be prosecuted in the federal courts under 18 U.S.C. §§ 111 and 1114.

§ 258.17 Hoopa Valley Indian Reservation Court of Indian Offenses.

The Hoopa Valley Indian Reservation Court of Indian Offenses established under 25 CFR Part 11 has jurisdiction which is limited to trying eligible Indians accused of violating the regulations of this Part and to determining whether nets and other fishing gear are forfeited.

PART 259—PREFERENCE IN EMPLOYMENT

Sec.

259.1 Definitions.
259.2 Appointment actions.
259.3 Application procedure for preference eligibility.

AUTHORITY: 4 Stat. 737, 25 U.S.C. 43; 22 Stat. 88, 25 U.S.C. 46; 28 Stat. 313, 25 U.S.C. 44; 24 Stat. 389, 25 U.S.C. 348; and 48 Stat. 986, 25 U.S.C. 472 and 479.

SOURCE: 43 FR 2393, Jan. 17, 1978, unless otherwise noted.

§ 259.1 Definitions.

For purposes of making appointments to vacancies in all positions in the Bureau of Indian Affairs a preference will be extended to persons of Indian descent who are:

(a) Members of any recognized Indian tribe now under Federal Jurisdiction;

(b) Descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation;

(c) All others of one-half or more Indian blood of tribes indigenous to the United States;

(d) Eskimos and other aboriginal people of Alaska; and

(e) Until January 17, 1981, a descendant of at least one-quarter degree Indian ancestry of a currently federally-recognized tribe whose rolls have been closed by an act of Congress.

§ 259.2 Appointment actions.

(a) Preference will be afforded a person meeting any one of the standards of § 259.1 whether the appointment involves initial hiring, reinstatement, transfer, reassignment or promotion.

(b) Preference eligibles may be given a Schedule A excepted appointment under 5 CFR 213.3112(a)(7). However, if the individuals are within reach on a Civil Service Register, they may be given a competitive appointment.

§ 259.3 Application procedure for preference eligibility.

(a) Proof of eligibility must be submitted with the person's application for a position.

(b) In order for a person to be considered a preference eligible according to the standards of § 259.1, they must submit proof of membership, descendancy or degree of Indian ancestry as indicated on rolls or records acceptable to the Secretary.

SUBCHAPTER X—HOUSING

PART 261—HOUSING IMPROVEMENT PROGRAM

Sec.
261.1 Purpose.
261.2 Definitions.
261.3 Policy.
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261.8 Inspection.
261.9 Flood disaster protection.
261.10 Waivers.

AUTHORITY: 42 Stat. 208 (25 U.S.C. 13).

SOURCE: 40 FR 19195, May 2, 1975, unless otherwise noted. Redesignated at 40 FR 44543, Sept. 29, 1975.

§ 261.1 Purpose.

The purpose of this Part 261 is to prescribe the terms and conditions under which assistance is given to Indians under the Housing Improvement Program.

§ 261.2 Definitions.

As used in this Part 261:

(a) "Secretary" means the Secretary of the Interior.

(b) "Commissioner" means the Commissioner of Indian Affairs.

(c) "Area Director" means the Officer in charge of one of the Bureau of Indian Affairs' Area Offices or his authorized delegate.

(d) "Superintendent" means the Officer in charge of the Agency or other local office of the Bureau of Indian Affairs.

(e) "Indian" means a person of Indian descent who is either of the following:

(1) An enrolled member; i.e., a person whose name appears on the formally approved membership roll of a tribe. In the case of the Five Civilized Tribes in Eastern Oklahoma and the Osage Tribe where rolls have been closed an applicant may be a descendant of an enrolled member accepted as such by the Superintendent; or

(2) A person who is considered to be a member by or who meets the membership requirements of a federally recognized tribe.

(3) A person of one-half or more degree Indian ancestry who is a descendant of a member of a tribe that has been federally recognized by treaty or otherwise. Proof of ancestry must be by rolls or records acceptable to the Secretary. Such persons are hereinafter referred to as "nontribal Indians."

(f) "Tribe" means:

(1) An Indian tribe, band, group, pueblo or community recognized by the Secretary of the Interior; or

(2) An Alaska Native Village as defined in and eligible for benefits under the Claims Settlement Act (Act of December 18, 1971, 85 Stat. 688).

(g) "Family" means one or more persons maintaining a household.

(h) "Ownership" means having fee title, trust title (including participation in multiple ownership), leasehold interest, use permit, indefinite assignment or other exclusive possessory interest. In the case of Alaska, the term also includes one who the Superintendent determines has a reasonable prospect of becoming an owner in accordance with the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688).

(i) "Standard housing" means a dwelling in a condition which is decent, safe and sanitary so that it meets the following minimums:

(1) General construction conforms to applicable building standards for the region. Structures to be improved are to be in sound condition. Deterioration, if any, will not be at a level creating a health or safety hazard, or a comfort problem.

(2) The heating system has the capacity to maintain a minimum temperature of 70 degrees in the dwelling during the coldest weather in the area. It must be safe to operate and maintain and deliver a uniform distribution of heat. Applicable local heating codes are to be followed. If there are no applicable local codes, county or state codes are to be used as a guide.

(3) The plumbing system includes a properly installed system of piping. Fixtures consist of a kitchen sink and a partitioned bathroom with lavatory,

toilet and bath and/or shower. The water supply, plumbing and sewage disposal systems meet minimum standards of the Indian Health Service, tribe, county or state, whichever is applicable.

(4) The electrical system includes wiring and equipment properly installed to safely supply electrical energy for adequate lighting and for the operation of appliances. The tribal, county, or state electrical code, whichever is applicable, must be used as an alternative standard. If no codes exist, a minimum of two circuits per dwelling must be installed with provision for at least one additional circuit for future use.

(5) Family size per dwelling does not exceed these limits:

(i) Two bedroom dwelling: Up to four persons (the first bedroom must have at least 120 sq. ft. of floor space and the second bedroom must have a minimum of 100 sq. ft. of floor space.)

(ii) Three bedroom dwelling: Up to seven persons (the first bedroom must have at least 120 sq. ft. of floor space and the second and the third bedrooms must have a minimum of 100 sq. ft. of floor space each.)

(iii) Four bedroom dwelling: Adequate for all but the very largest families (the first bedroom must have at least 120 sq. ft. of floor space and the remaining bedrooms must have a minimum of 100 sq. ft. of floor space each.)

§ 261.3 Policy.

The Bureau of Indian Affairs' housing policy is consistent with the specific objectives of the National housing policy which declares that every American family should have the opportunity for a decent home and a suitable living environment. To the maximum extent possible, the program will be administered through tribes, tribal housing authorities, or other tribal organizations, or by having tribal officials participate in the applicant selection process. Every effort will be made to use Housing Improvement Program funds in conjunction with other programs so the result will be a greater amount of housing improved than would otherwise be possible with the Housing Improvement Program funds alone. In cases where training programs are used in conjunction with the Housing Improvement Program, funds are to be limited to the purchase of materials and providing inspection and skilled labor otherwise unavailable

§ 261.4 Program categories.

The Housing Improvement Program will provide assistance in the following categories:

(a) *Repairs to housing that will remain non-standard.* Under this category:

(1) Financial assistance will be granted to finance repairs and additions to existing substandard housing so that it is safe, more sanitary and livable until such time as standard housing is available.

(2) The standard to be applied in deciding whether to provide assistance is improvement in the condition of the house, i.e., improved livability or reduced health and safety hazards even though it may be obvious that such an undertaking will not improve the house to the extent that it will meet the standard of decent, safe and sanitary. Examples of the improvement that may be assisted are: weather-tightening, re-roofing, electrical wiring, chimney repairs, foundations, heating, sanitary facilities, painting, additional living and/or sleeping space, and kitchen or bathroom additions in conjunction with Indian Health Service projects.

(3) The cumulative total expenditure of the Housing Improvement Program funds should not exceed $2,500 for any one dwelling.

(4) The funds shall be granted. No restrictions on the use of the home may be imposed. Repairs to homes being rented regardless of ownership may be made but rent cannot be increased as a result of the repair alone and applicants should have a reasonable certainty that they will remain in the house for a reasonable period following the repairs.

(b) *Repairs to housing that will become standard.* Under this category:

(1) Financial assistance will be granted to finance repairs, renovation and/or enlargement of existing structurally sound but deteriorated dwell-

ings which can economically be placed in a standard condition.

(2) Upon completion of work, the dwelling should at least meet the decent, safe and sanitary standards of standard housing as defined in § 261.2(i).

(3) The cumulative total expenditure of the Housing Improvement Program funds should not exceed $20,000 for any one dwelling.

(4) Undertakings under this category are primarily for applicants who are living in their own home. Applicants who rent from Indian owners are eligible on the condition that, prior to the start of the improvement, a written occupancy agreement exists for a minimum of five years. The agreement must provide that rent for the term cannot be raised because of the improvement work. The owner must also agree in writing with the tribe that in the event the agreement is terminated prior to expiration of the term, he will hold the premises vacant for up to six months for a new occupant who meets the eligibility requirements of this Part. Repair of a rental unit occupied by an eligible applicant but owned by a non-member of a Federally recognized Indian tribe (including non-Indians) will not be made unless approved in writing by the Area Director after receiving a written justification from the Superintendent.

(c) *Down payments.* Under this category:

(1) The Housing Improvement Program provides grants in order to make the applicant eligible to receive housing loans from tribal, Federal or other sources of credit. Grants are only for standard housing. The applicant must establish that he has an inadequate income or limited financial resources to meet the full cost of the loan.

(2) The grant should not exceed the amount necessary to secure the loan plus the closing costs or $5,000, whichever is less. (In the case of Alaska, the grant amount should not exceed $6,000.)

(3) The method of advancing the grant must insure that the funds are used for the purpose intended. No security will be taken or lien made on the house because of the grant.

(d) *New housing.* Under this category:

(1) The Housing Improvement Program will provide the financing of the construction of new standard housing when it is established that there is no reasonable prospect that standard housing can by financed from sources other than the Housing Improvement Program. This category may not be used if there is an unmet need in the category given in paragraph (b) of this section, unless there is a dire need for assistance under this category and it is justified in writing and approved by the Area Director.

(2) The housing provided under this category must meet the housing standards of this Part 261. Two exceptions to standard housing will be permitted:

(i) Where one or more of the utilities are not available and there is no prospect of the utilities becoming available; and

(ii) In areas of severe climate, house size may be reduced to meet applicable building standards of the region. The house site must be chosen so that access to utilities is most economical, ingress and egress adequate, aesthetics are considered, and proximity to school bus routes are taken into account.

(3) The cumulative total expenditure of funds should not exceed $45,000 for a dwelling and equipment. (In the case of Alaska, the total expenditure of funds should not exceed $55,000.) The occupant will be responsible for all maintenance of the completed dwelling, and all utility fees, deposits or costs required for service. All contractor built houses must contain a one-year warranty against defects, materials, and workmanship.

(4) The applicant must have ownership (as defined in § 261.2(h)) of the land on which the house is built. In the case of a leasehold interest, it must be for not less than 25 years. Within five years after completion of construction if an owner of a house built on tribal lands desires to move, he must first notify the tribe of his intention. Within 60 days of such notice, the tribe shall have the right to either assume his interest in the house or designate someone to assume his interest. If the tribe takes no action, he

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may dispose of the house without regard to any restrictions in this Part.

(5) Adequate fire insurance where determined feasible by the Superintendent must be carried.

[40 FR 19195, May 2, 1975. Redesignated at 40 FR 44543, Sept. 29, 1975, and amended at 42 FR 43977, Sept. 1, 1977; 45 FR 2026, Jan. 10, 1980]

§ 261.5 Eligibility.

(a) Priority is given to families with the greatest need in relation to income, family size, and of not being eligible for other available programs providing housing assistance. Each application for assistance must be approved by the tribal housing authority or other officially designated housing entity of the tribe being served. Applications of non-tribal Indians must be submitted to the Superintendent of the local agency office for approval. Applications to the housing authority or other officially designated housing entity of the tribe being served must be in writing and must establish that:

(1) The applicant is an Indian.

(2) The present housing of the applicant is substandard or inadequate in terms of capacity to meet the physical needs of the family.

(3) The economic resources of the applicant are inadequate or factors exist which make the applicant unable to secure housing from other sources.

(4) The applicant for assistance under one of the categories in § 261.4 meets the ownership requirements given under that category.

(b) After July 1, 1975, an applicant can only receive assistance one time under categories given in paragraphs (b), (c), and (d) of § 261.4.

(c) The Department of Housing and Urban Development financed houses under the administration of an Indian housing authority will not be eligible for assistance until the end of the project indebtedness to the Federal Government.

§ 261.6 Program implementation.

The Housing Improvement Program will be implemented according to the plans, priorities and requests of the tribe served. In accordance with this, the methods which may be used to implement the program are:

(a) Direct grants to applicants.

(b) Contract or grant agreements negotiated with tribes, Indian housing authorities established pursuant to tribal ordinances or state laws, or incorporated tribal organizations. The completion of a specified amount of housing construction or improvement will either be performed directly by the tribe or organization or through a program of the tribe or organization providing funds and assistance to Indians.

(c) Contracts negotiated by the Bureau of Indian Affairs' Contracting Officer or his designated representative for elements of an agency Housing Improvement Program with one or more of the following: Tribes, Indian housing authorities, Indian controlled private enterprise, incorporated tribal organizations.

(d) Contracts with private non-Indian contracting firms in accordance with normal Bureau of Indian Affairs' contracting procedures.

(e) Programs administered directly by the Bureau of Indian Affairs.

§ 261.7 Appeals.

(a) If an applicant is denied assistance by failure to obtain tribal approval under § 261.5(a), he may appeal to the Superintendent. The Superintendent may approve assistance if the applicant is in serious need of housing. The Superintendent's decision on such appeals may be appealed by the applicant or the tribe under the provisions of Part 2 of this chapter.

(b) Denial of an application by a Bureau of Indian Affairs' official may be appealed under the provisions of Part 2 of this chapter. Notice of the right of appeal must be given each applicant in the notice of rejection.

§ 261.8 Inspection.

The Superintendent is responsible for inspection or the assurance that there is adequate provision for inspection by Bureau of Indian Affairs' employees, contractors, or subcontractors during the course of construction. The Superintendent is also responsible for the provision of inspection prior to the purchase of an existing house. These inspections are not necessary where inspection is provided for by the De-

partment of Housing and Urban Development or the Farmers Home Administration or other governmental agencies.

§ 261.9 Flood disaster protection.

No Housing Improvement Program funds, under categories (b), (c), and (d) of § 261.4, will be expended in areas designated as having special flood hazards under the Flood Disaster Protection Act of 1973 (Pub. L. 93-234, 87 Stat. 977) unless the requirements for suitable flood insurance are met.

§ 261.10 Waivers.

A proposal for a waiver of the regulations of this Part 261 must be submitted to the Commissioner and will be considered if substantial justification is presented according to § 1.2 of this chapter.

SUBCHAPTER Y—INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT PROGRAMS

PART 271—CONTRACTS UNDER INDIAN SELF-DETERMINATION ACT

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SOURCE: 40 FR 51286, Nov. 4, 1975, unless otherwise noted.

Subpart A—General Provisions

§ 271.1 Purpose and scope.

(a) The purpose of the regulations in this Part is to give the application and approval process for non-profit con-

tracts with the Bureau under section 102 of Title I of the Indian Self-Determination and Education Assistance Act (Public Law 93-638, 88 Stat. 2203). Title I is known as the Indian Self-Determination Act. Contracts under the Act include "tribal governmental functions" as defined in § 271.2(q), "business related functions" as defined in § 271.2(d), and certain contractable trust resources programs or parts of programs as set forth in § 271.32. The nature of contracts with Indian entities which do not fall within the purview of the Act, including contracts which may provide for profit, and the conditions for entering into such contracts, are set forth in the regulations implementing the Act of June 25, 1910 (36 Stat. 861, 25 U.S.C. 47), commonly referred to as the "Buy Indian" Act.

(b) Section 104 of Title I of the Act provides authority for making grants for certain purposes. It is the Bureau's policy to make grants for the purpose specified in section 104 of the Act in lieu of contracts. Part 272 of this chapter gives the procedures and requirements for obtaining grants under section 104 of the Act.

(c) Nothing in these regulations shall be construed as:

(1) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe;

(2) Authorizing or requiring the termination of any trust responsibility of the United States with respect to the Indian People; or

(3) Permitting significant reduction in services to Indian people as a result of this Part.

(d) Nothing in these regulations shall be construed to mandate a tribe to apply for a contract or contracts with the Bureau to plan, conduct, and administer all or parts of any Bureau program. Such applications under these regulations are strictly voluntary.

§ 271.2 Definitions.

As used in this part:

(a) "Act" means the Indian Self-Determination and Education Assistance Act (Public Law 93-638, 88 Stat. 2203).

(b) "Area Director" means the official in charge of a Bureau of Indian Affairs area office except that:

(1) The term means the Director, Office of Tribal Resources Development, for matters regarding contracting for all or part of the Indian action team program whenever a tribal organization elects to submit such a contract application through the Indian Technical Assistance Center and the tribal governing body(s) has authorized such application in its resolution pursuant to § 271.18(b).

(2) The term means the Director, Office of Administration, for matters regarding contracting for all or part of the construction, building and utilities programs which is contractable under this part and which is within the responsibility of the Division of Facilities Engineering.

(c) "Bureau" means the Bureau of Indian Affairs.

(d) "Business related function" means all programs authorized to be administered by the Bureau for the benefit of Indians enumerated as line items in the Bureau's annual budget request under Tribal Resources Development as the Subactivities of Business Enterprise Development, Credit and Indian Action Teams; Revolving Funds for Loans; Indian Loan Guaranty and Insurance Funds; and also programs or parts of programs connected with construction projects but exclusive of the actual construction of the project.

(e) "Commissioner" means the Commissioner of Indian Affairs, under the direction and supervision of the Assistant Secretary—Indian Affairs, is responsible for the direction of day-to-day operations of the Bureau of Indian Affairs.

(f) "Days" means calendar days.

(g) "Economic enterprise" means any commercial, industrial, agricultural, or business activity that is at least 51 percent Indian owned, established or organized for the purpose of profit.

(h) "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act

(85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(i) "Indian" means a person who is a member of an Indian tribe.

(j) "Previously private school" means a school (other than a Federal school formerly operated by the Bureau) that is operated primarily for Indian students in any grade or grades from age 3 years through grade(s) 12; and, which at the time of application is controlled, and sanctioned or chartered by the governing body(s) of an Indian tribe(s).

(k) "Recontracting" means the entering into a contract with a tribal organization which holds a contract for the same program.

(l) "Resolution" means the formal manner in which the tribal government expresses its legislative will in accordance with its organic documents. In the absence of such organic document, a written expression adopted pursuant to tribal practices will be acceptable.

(m) "Secretary" means the Secretary of the Interior.

(n) "Superintendent" means the official in charge of a Bureau of Indian Affairs agency office except that:

(1) The term means the chief, Indian Technical Assistance Center, for matters regarding contracting for all or part of the Indian action team program whenever a tribal governing body elects to submit such a contract application through the Indian Technical Assistance Center and so indicates in its resolution pursuant to § 271.18(b).

(2) The term means the Chief, Division of Facilities Engineering, for matters regarding contracting for all or part of the construction, building, and utilities program which is contractable under this part and which is within the responsibility of the Division of Facilities Engineering.

(o) "Tribal Chairman" means tribal chairman, governor, chief or other person recognized by the tribal government as its chief executive officer.

(p) "Tribal government," "tribal governing body" and "tribal council" means the recognized governing body of an Indian tribe.

(q) "Tribal governmental function" means all programs authorized to be administered by the Bureau for the benefit of Indians enumerated as line items in the Bureau's annual budget requests under the Activities of Education and Indian Services, the Subactivities of Direct Employment and Road Maintenance, and those programs related to Irrigation and Power Operation and Maintenance identified as a part of the subactivity minerals, mining, irrigation and power under the Activity of Tribal Resources Development.

(r) "Tribal organization" means the recognized governing body of any Indian tribe; or any legally established organization of Indians or tribes which is controlled, sanctioned, or chartered by such governing body or bodies or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities; *Provided,* That a request for a contract must be made by the tribe that will receive services under the contract; *Provided further,* That in any case where a contract is let to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting of such contract.

(s) "Trust resources" means natural resource land, water, minerals, funds or property, asset, or claim, including any intangible right or interest in any of the foregoing, which is held by the United States in trust for any Indian tribe or any Indian individual or which is held by any Indian tribe or Indian individual subject to a restriction on alienation imposed by the United States.

(t) "Trust responsibility" means, for the purposes of this part only, to protect, manage, develop and approve authorized transfers of interests in trust resources held by Indian tribes and Indian individuals to a standard of the highest degree of fiducary responsibility.

(u) "Assistant Secretary—Indian Affairs" means the Assistant Secretary—

Indian Affairs who discharges the authority and responsibility of the Secretary for activities pertaining to Indians and Indian affairs.

[40 FR 51286, Nov. 4, 1975, as amended at 41 FR 5098, Feb. 4, 1976; 43 FR 37440, Aug. 23, 1978; 45 FR 13448, Feb. 29, 1980]

§ 271.3 Revision or amendment of regulations.

In order to make any substantive revisions or amendments to the regulations in this Part, the Secretary shall take the following actions:

(a) Consult with Indian tribes and national and regional Indian organizations to the extent practicable about the need for revision or amendment and consider their views in preparing the proposed revision or amendment.

(b) Present the proposed revision or amendment to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

(c) Publish the proposed revisions or amendments in the FEDERAL REGISTER as proposed rulemaking to provide adequate notice to, and receive comments from, all interested parties.

(d) After consideration of all comments received, publish the regulations in the FEDERAL REGISTER in final form not less than 30 days before the date they are made effective.

(e) Annually consult with Indian tribes and national and regional Indian organizations about the need for revision or amendment, and consider their views in preparing the revision or amendment.

(f) Nothing in this section shall preclude Indian tribes or national or regional Indian organizations from initiating request for revisions or amendments subject to paragraphs (a), (b), (c) and (d) of this section.

§ 271.4 Statement of policy.

(a) The Congress has recognized the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

(b) The Congress has declared its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibilities to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.

(c) It is the policy of the Bureau to facilitate the efforts of Indian tribes to plan, conduct, and administer programs, or portions thereof, which the Bureau is authorized to administer for the benefit of Indians and to facilitate the coordination of all Federal and other programs on Indian reservations.

(d) It is the policy of the Bureau to continually encourage Indian tribes to become increasingly knowledgeable about Bureau programs and the opportunities Indian tribes have regarding them; however, it is the policy of the Bureau to leave to Indian tribes the initiative in making requests for contracts and to regard self-determination as including the decision of an Indian tribe not to request contracts.

(e) It is the policy of the Bureau not to impose sanctions on Indian tribes with regard to contracting or not contracting; however, the special resources made available to facilitate the efforts of those Indian tribes which do wish to contract should be made known to all tribes, as should the current realities of funding and Federal personnel limitations.

(f) Contracting is one of several mechanisms by which Indian tribes can exercise their right to plan, conduct, and administer programs or portions thereof which the Secretary is authorized to administer for the benefit of Indians. Another mechanism afforded Indian tribes is the use of a grant, as provided in Part 272 of this chapter, or other resources, to plan the manner in which it wishes the Bureau to operate a program or portion thereof.

(g) Contracting by its very nature places Bureau officials in the dual position of assisting Indian tribes, in many instances, by furnishing technical assistance in preparation of contract proposals, and of carrying out their fiscal and administrative responsibilities as officials of the Federal Government. It is recognized that very often these two positions are in opposition to each other. The Act and these regulations are designed to address this problem to the degree practicable. The Commissioner, Area Directors and Superintendents, as line officers of the Bureau, are expected to balance these two positions within the framework of the regulations in this Part.

(h) The regulations in this Part are not meant to and do not change the eligibility criteria which individuals must meet to be eligible for any program currently operated by the Bureau. The eligibility criteria for each Bureau program is given in the Part of Chapter I, Title 25 of the Code of Federal Regulations which deals with that program. A contractor shall use the existing Bureau eligibility criteria in operating all or parts of a Bureau program under a contract under this Part unless a waiver is obtained from the Commissioner. The Commissioner may not waive eligibility criteria established by statute. The Commissioner may waive eligibility criteria established by regulation in Chapter I, Title 25 of the Code of Federal Regulations.

Subpart B—Application Process

§ 271.11 Eligible applicants.

Any tribal organization is eligible to apply for a contract or contracts with the Bureau to plan, conduct, and administer all or parts of Bureau programs under section 102 of the Act. However, before the Bureau can enter into a contract with a tribal organization, it must be requested to do so by the Indian tribe or tribes to be served by the contract in accordance with § 271.18.

§ 271.12 Contractable Bureau programs.

(a) Tribal organizations are entitled to contract with the Bureau to plan, conduct, and administer all or parts of any program which the Bureau is authorized to administer for the benefit of Indians. All or parts of any program include:

(1) Any part of a Bureau program which is divisible from the remainder of the program so long as the contract does not significantly reduce benefits to Indians served by the non-contracted part(s) of the program. However, to the extent that it is within the Bureau's existing authority and the program or part thereof involves only one tribe and one Bureau Agency or Area Office, the benefits provided to Indians by the non-contracted part(s) of the program may be reduced at the request of the tribe. When the program or part thereof serves more than one tribe, the benefits provided by the non-contracted part(s) of the program may be reduced when all of the tribes served consent to a reduction.

(2) A single employee position only when the functions to be performed provide a direct service to Indians and meets the criteria in paragraph (a) of this section.

(3) Programs or parts of programs or services that are authorized but not currently operated or provided by the Bureau.

(4) Operation of, or services provided by, previously private schools.

(5) Alterations and repairs in direct support of a contracted program. Individual construction projects are not contracted under title I of the act, but can be contracted under other authorities.

(6) Architect and engineer services.

(b) Paragraph (a) of this section also applies to trust resources programs or portions thereof. Additional criteria for contractable trust resources programs, or portions thereof, are given in § 271.32.

[40 FR 51286, Nov. 4, 1975, as amended at 43 FR 37440, Aug. 23, 1978]

§ 271.13 Application information.

Application instructions and related materials may be obtained from Superintendents, Area Directors, and the Commissioner.

§ 271.14 Contents of contract application.

Application for a contract under this Part shall contain the following information in sufficient detail to permit evaluation of the application in light of the declination criteria set forth in § 271.15. No further detail is, or shall be, required.

(a) Full name, address and telephone number of the tribal organization which is applying for the contract.

(b) Full name of tribe(s) with which the tribal organization is affiliated.

(c) Full name of tribe(s) directly benefiting or receiving services from the proposed contract.

(d) Documentation of the tribal request to contract as required in § 271.18.

(e) Date of submission to the Bureau and the name of the office where the application was submitted.

(f) Signature by the authorized representative of the tribal organization and the date thereof.

(g) Estimated number of Indian people who will receive benefits or services from the contract, based on available data including tribal records.

(h) Descriptive narrative of what functions, Bureau programs, or portions of programs the tribal organization wants to contract for.

(i) Plan of operations, which shall include but is not limited to:

(1) A statement of tribal goals and objectives to be obtained by the contract.

(2) The organizational methods and procedures to be used to accomplish the tribal goals and objectives.

(3) [Reserved]

(4) The budget showing the amount and sources of funding and other resources required for the contract.

(5) Staffing plan, including extent, if any, that Bureau personnel may be utilized. (See Part 275 of this chapter for staffing options the applicant may wish to consider).

(6) The evaluation criteria and control systems that the tribal organization will use to measure progress and accomplishment and to assure that the quality and quantity of actual performance conforms to the requirements of the plans.

(j) Statement of tribal organization's substantive knowledge of the program, part of a program or functions to be contracted.

(k) Description of personnel system and position descriptions for key personnel.

(l) Listing of equipment, facilities, and buildings needed to carry out the contract and how the tribal organization intends to obtain them.

(m) Certification by a licensed accountant that the bookkeeping and accounting procedures which the tribal organization presently uses meet the standards of § 276.7 of this chapter. In place of the certification; the tribal organization may submit a written agreement to establish a bookkeeping and accounting system that meets the standards of § 276.7 of this chapter and to have the bookkeeping and accounting system certified before the Bureau disburses any funds under a contract awarded as a result of the application. The accounting system shall provide for the accumulation of costs throughout the contract term or performance period in such a manner as to facilitate audit or review of the financial records. When a certification has been submitted in connection with a previous application, the applicant may state this fact instead of submitting a new certification.

(n) Proposed system for managing property and keeping records or agreement to establish within 90 days of contract execution, a satisfactory system for managing property and keeping records.

(o) Any advance payments required by the tribal organization for contract including the type of advance, time period, and justification for the advance payments.

(p) Term of contract requested and proposed starting date of contract.

(q) A listing of the procedures which the applicant has in place to assure that services and assistance shall be provided to the Indians affected by the contract in a fair and uniform manner. If the applicant does not have such procedures but agrees to establish them, a statement to that effect should be included in the application. Such procedures include eligibility criteria for tribal members to receive services, recordkeeping adequate to verify the fairness and uniformity of

services in case of formal complaints, an adequate complaint procedure available to all Indians affected, and an explanation of what rights an individual will retain pending resolution of a complaint.

(r) A statement that the applicant agrees to keep such records as required pursuant to § 271.46, to make reports required by § 271.49, and to make such information and reports available to Indian clients as required by § 271.48.

(s) Identification of any subcontractor(s); the amount and purpose of the subcontract; the manner in which the subcontractor was selected; and the basis for the cost of the subcontract. If a subcontract has not yet been awarded the contract application should include a statement that the applicant agrees to comply with 41 CFR 14H-70.409 in awarding any subcontracts; except that in the case of a tribal organization applying for a contract under § 273.11 the statement should be that the applicant agrees to comply with § 273.36 in awarding any subcontracts

[40 FR 51286, Nov. 4, 1975, as amended at 41 FR 5098, Feb. 4, 1976; 43 FR 37440, Aug. 23, 1978]

§ 271.15 Criteria for declining to contract.

(a) The Commissioner may decline to contract only for the specific causes given in paragraph (b) of this section. The burden of proof is on the Commissioner to demonstrate, through substantial evidence, that one of the specific grounds for declination exists and that, therefore, the application must be declined.

(b) The Commissioner may decline to contract when:

(1) The services to be provided to the intended Indian beneficiaries of the particular program or function to be contracted will not be satisfactory.

(i) It will be presumed by the Bureau that the program plan and budget set forth by the tribal organization provides a basis for the delivery of satisfactory services to the Indian people unless it can be demonstrated by the Bureau by substantial evidence that the program will yield results which will be deleterious to the welfare of the Indian people to be served.

(ii) The service to be provided shall be deemed satisfactory if the contract application indicates that the applicant has or will establish procedures to assure that services and assistance shall be provided to the Indians affected by the contract in a fair and uniform manner. Such procedures include eligibility criteria for a tribal member to receive services; recordkeeping adequate to verify the fairness and uniformity of services in case of formal complaints; an adequate complaint procedure available to all Indians affected; and those rights the individual will retain following the complaint.

(2) Adequate protection of trust resources is not assured. Criteria for determining if there is adequate protection of trust resources are given in § 271.34.

(3) The proposed project or function to be contracted cannot be properly completed or maintained by the proposed contract.

(4) The application is not within the purview of § 271.1(a).

(c) In arriving at his finding, the Commissioner shall consider whether the tribal organization would be deficient in performance under the contract with respect to the factors listed in this paragraph.

(1) Equipment, buildings and facilities. No higher standards with regard to buildings, facilities, or equipment shall be applied to tribal organizations than have previously been applied to the Bureau. As provided in § 271.42, the Bureau shall make available the use of all equipment which has been allocated to the operation of the program by the Bureau in the past, unless the Bureau proves the provision of the equipment will seriously interfere with the Bureau's ability to provide services to Indian people in non-contracted programs. Where equipment is shared by the programs to be contracted and other non-contracted programs, equipment-sharing or other suitable arrangements shall be stated in the contract.

(2) Bookkeeping and accounting procedures. It must be clearly demonstrated by the Bureau that the tribal organization which will undertake the contract does not have or cannot set in place, using the contract funds, an ac-

counting and bookkeeping system which will be adequate.

(3) Substantive knowledge of the program to be contracted.

(i) Where the tribal organization proposing to contract is the tribal governing body and the program or function to be contracted is a tribal governmental function, there shall be an absolute presumption that the tribal governing body has substantive knowledge of the program or function to be contracted.

(ii) Where the tribal organization proposing to contract is not the tribal governing body or the program or function to be contracted is not a tribal governmental function, the tribal organization shall be presumed to have substantive knowledge of the program to be contracted if the tribal organization meets one or more of the following conditions:

(A) The tribal organization has adequately managed a similar program before through grant or contract.

(B) The tribal organization which is to manage the project possesses by virtue of its knowledge and/or experience substantive knowledge of the program to be contracted.

(C) The tribal organization has been a consumer of such services in the past and thus has developed an understanding of the issues involved with the program sufficient to enable it to effectively carry out the contract operation; and, the tribal organization can secure through the resources of the contract, Bureau staff or other resources, the training in the particular subject area which will develop its substantive knowledge of the program.

(4) Community support. Before the Bureau can enter into a contract there must be a request made in accordance with § 271.18. The tribal governing body's resolution under § 271.18 shall be presumed to demonstrate that there is community support for the proposed contact. Unless it can be demonstrated by substantial evidence that there is a lack of community support for the contract and the lack of support will result in unsatisfactory services, inadequate protection of trust resources or impossibility of service maintenance, the tribal governing body's resolution shall be deemed conclusive. Those asserting that there is a lack of community support for a proposed contract must demonstrate that they have exhausted their tribal remedies before the matter is considered by the Bureau. In any event, there will be no finding by the Bureau of a lack of community support that would result in deficiencies in performance under the contract until those asserting it have exhausted all their tribal remedies.

(5) Adequacy of trained personnel. The adequacy of trained personnel available to the tribal organization to carry out the proposed contract will be presumed if any of the following conditions exist:

(i) If the tribal organization has a personnel system that prescribes minimum occupational qualification standards which insure equal access to all qualified tribal members; procedures for the selection of personnel on the basis of such standards; and the personnel to be used under the proposed contract are to be employed under the personnel system.

(ii) If there is no tribal personnel system, it will be assumed that the personnel to be employed under the proposed contract are adequately trained if the tribal organization has established position descriptions for key personnel to be employed under the contract and agrees to establish a personnel system similar to the one described in paragraph (c)(5)(i) of this section.

(6) Other necesssary components of contract performance.

(i) All other necessary components of contract performance will be deemed to be met unless a tribal organization:

(A) Does not agree to develop an adequate personnel system that provides selection standards which insure equal access to all qualified tribal members;

(B) Has not agreed to establish and maintain a property management system which will adequately account for and protect government property.

(C) Has not agreed to keep such records as required pursuant to § 271.46, make reports required by § 271.49, or to make such reports and information

available to Indian clients as required by § 271.48.

(D) Has not submitted a completed contract application.

(ii) All "other necessary components" have been specifically identified in this section. No other components shall be defined which may serve as a basis for declination unless they are added to these regulations by revision or amendment of the regulations.

(d) Program plans and designs of tribal organizations for contract operation of Bureau programs or parts may be inconsistent with other Parts of this chapter if a waiver is obtained from the Commissioner. Inconsistencies between such plans and designs and Bureau manuals, guidelines or other procedures that are appropriate to programs or parts of programs operated by the Bureau are not grounds for declination.

(e) Tribes; or tribal organizations acting under delegated authority pursuant to § 271.18(c)(2)(vii); may request from the Commissioner a waiver under 25 CFR 1.2 of any regulations in this chapter.

(f) Bureau officials may not decline to enter into a contract with a tribal organization because of any objection that could be overcome through the contract.

[40 FR 51286, Nov. 4, 1975, as amended at 43 FR 37441, Aug. 23, 1978]

§ 271.16 Access to Bureau records.

(a) Upon the request of a tribal organization, the Superintendent or Area Director shall make available any information requested and such other information as the tribal organization may need to prepare a contract application or carry out a contract. Tribal organizations, other than the governing body of an Indian tribe (except when operating under a contract authorized under the Act), shall seek such information through that tribe's chairman or other official(s) designated by the tribal governing body, unless the tribal resolution under § 271.18(c)(2) or subsequent resolution sets forth another procedure. Requests for information are subject only to the limits of the Freedom of Information Act (5 U.S.C. 552) as amended by the Act of November 21, 1974 (Public Law 93-502, 88 Stat. 1561), the Privacy Act (5 U.S.C. 552a) and other applicable laws. Information to be made available shall include, but not be limited to:

(1) Data on program services to intended beneficiaries;

(2) Reports on Bureau program operations for the past three years;

(3) Present Bureau staffing pattern and grade levels, existing vacancies and position decriptions;

(4) Data on the amount of funds which have been provided for the direct operation of the specific program(s) or portions thereof by the Bureau during the past fiscal year and proposed contract period;

(5) Existing appraisals, inventories, and assessment of trust resources.

(b) The tribal organization shall have access to Bureau records as follows:

(1) The tribal organization shall have access to needed Bureau records at the appropriated Bureau office for review and making copies of selected records.

(2) If the tribal contractor needs a reasonable volume of identifiable Bureau records, the Bureau will furnish the copies to the tribal organization.

(3) Where a large volume of records are needed and copying is not practical or feasible, the records may be physically located at the contract site provided that a Bureau official is designated by the Commissioner or Area Director as custodian of the records.

(c) Failure of the Bureau to provide such access may be appealed under the provisions set out in 43 CFR 2.17.

[40 FR 51286, Nov. 4, 1975, as amended at 41 FR 5098, Feb. 4, 1976; 43 FR 37441, Aug. 23, 1978]

§ 271.17 Pre-application technical assistance.

(a) Upon the request of a tribe, Bureau Agency and Area Offices shall provide technical assistance to a tribal organization to assist them in:

(1) Determining the appropriateness of contracting.

(2) Developing an effective program design and plan of operations.

(3) Preparing technical parts of the contract application.

(4) Such other ways as may be requested.

(b) Upon the request of a tribe, to the extent that funds are available, the Bureau may make technical assistance available to the tribal organizations from sources including, but not limited to:

(1) Technical assistance organizations under contract with the Bureau.

(2) Grants under Part 272 of this chapter.

(3) Other technical assistance resources funded by the Bureau.

(c) Upon the request of a tribe, the Bureau will also assist tribal organizations in obtaining technical assistance from other Federal agencies.

§ 271.18 Tribal request for initial contract.

(a) Before the Bureau can enter into a contract with a tribal organization, it must be requested to do so by the tribe to be served under the contract. The tribe's request shall be in the form of a resolution by the tribal governing body. If the tribal organization is applying for a contract to perform services benefiting more than one tribe, an authorizing resolution from each tribal governing body must be obtained before submitting the application to the Bureau for approval. A tribal governing body may pass a single resolution authorizing a tribal organization to apply for, negotiate, and execute more than one contract if the resolution specifies for each contract the same information required in paragraphs (b) and (c) of this section.

(b) The resolution of the tribal governing body shall authorize the applicant tribal organization to apply for, negotiate and contract with the Bureau, subject to the specific terms, conditions and limitations of the resolution and applicable tribal laws, codes, and regulations. The resolution shall include the results of the vote (the number for and against), the date the resolution was approved, and signature of the person authorized to certify the accuracy of the information contained in the resolution. If the contract application is for all or part of the Indian Action Team program and the tribal governing body elects to submit the application through the Indian Technical Assistance Center, instead of through the Agency, this choice shall be indicated in the resolution.

(c) The tribal governing body's request (resolution) should include the following:

(1) When the tribal organization is the tribal governing body:

(i) A brief statement of the contract scope.

(ii) The tribal official authorized to negotiate the contract and any amendments thereto.

(iii) The tribal official authorized to execute the contract and any amendments thereof.

(iv) the expiration date of the authorities granted by the resolution.

(v) The extent and procedure, if any, for review of the contract and any amendments thereto by the tribal governing body before execution.

(vi) The proposed date for contract commencement.

(vii) The proposed term of the contract.

(2) When the tribal organization is other than the tribal governing body:

(i) The name of the tribal organization.

(ii) A brief statement of the contract scope.

(iii) The extent and procedure for review by the tribal governing body of the contract and any amendments thereto prior to execution by the tribal organization.

(iv) The tribal office or official to which the Bureau should send copies of contract documents and correspondence.

(v) The proposed term of the contract.

(vi) The proposed date for contract commencement.

(vii) Any delegations of authority and any limitations on authorities granted the tribal organization, including those in regard to:

(A) Access to Bureau records under § 271.16. Unless specified otherwise in the tribal resolution under this section or in a subsequent resolution, a tribal organization which is not the governing body of an Indian tribe is required to seek access to Bureau records through that tribe's chairman or other

official(s) designated by the tribal governing body.

(B) Recontracting under § 271.20.

(C) [Reserved]

(D) Requests to revise or amend a contract under §§ 271.61 and 271.62.

(E) Requests for contract retrocession under §§ 271.71 and 271.72.

(F) Right to appeal under §§ 271.81 and 271.82.

(G) Requests for waivers of the regulations in this chapter under § 271.15(e).

(viii) The expiration date of the authorities granted by the resolution. If applicable, a statement that the authorities granted continue until revoked by the tribal governing body will be sufficient.

(d) Any procedures given in this section concerning the manner in which a tribal governing body passes a tribal resolution shall apply except where inconsistent with the tribe's organic documents or in the absence of such organic documents the tribal practice.

[40 FR 51286, Nov. 4, 1975, as amended at 43 FR 37441, Aug. 23, 1978; 45 FR 13448, Feb. 29, 1980]

§ 271.19 Status of contracts in effect before effective date of regulations.

(a) Contracts between the Bureau and tribal organizations, which were entered into before the effective date of these regulations and are still in effect, shall continue until expiration of that contract. Any revisions or amendments requested during the contract period shall be subject to the provisions of Subpart E of this Part.

(b) Upon completion of contracts in effect before the effective date of the regulations, one of the following will occur:

(1) Where the tribal organization was authorized to enter into its existing contract by a tribal resolution, even if the resolution was passed before the effective date of these regulations, the tribal organization shall have the right to recontract subject to the provisions given in § 271.20.

(2) Where the tribal organization did not have a tribal resolution authorizing it to enter into the existing contract, it shall not be entitled to recontract, but must obtain a tribal request as provided in § 271.18 and submit an application as provided in § 271.14.

§ 271.20 Recontracting.

The Bureau will recontract for the same function(s) or program(s) (as defined in 41 CFR 14H-70.104) as the original contract at the written request of the tribal organization designated in the tribal resolution. Requests for recontracting shall be made as follows unless restricted by the resolution under § 271.18(c)(2) or subsequent resolutions:

(a) If the original contract provided services to only one Indian tribe, written applications to recontract shall be sent by the tribal organization to the Area Office as follows:

(1) Directly, when the tribal organization involved is the governing body of the tribe.

(2) Through the governing body of the tribe for review when the tribal organization is not the governing body of the tribe. Submission shall be made to the governing body at least 120 days before the original contract expires. Copies of the submission shall be sent to the Superintendent and Area Director at the time of submission to the tribal governing body. The tribal organization shall promptly notify the Area Director in writing of the date the tribal governing body received the application. If, within 45 days after receiving the application, the tribal governing body does not provide the Area Director with a formal resolution objecting to the application to recontract, the absence of receipt of such resolution shall constitute the tribe's request to recontract.

(b) If the original contract provided services to more than one Indian tribe, the tribal organization must give a copy of the written application to recontract to each tribal governing body 120 days before the original contract expires. The tribal organization shall promptly notify the Bureau office, where the application is to be submitted under § 271.21, in writing of the date the tribal governing bodies received copies of the application. If, within 45 days after receiving copies of the application, none of the tribal governing bodies provide the appropriate Bureau office with a formal resolution

objecting to the application to recontract, the absence of receipt of such resolutions shall constitute the tribe's request to recontract. If one or more of the tribal governing bodies involved object to the contract, they may withdraw from the contract. In such case those withdrawing can stipulate how they wish the previously contracted services to be rendered and the remainder may be recontracted at the option of the tribes involved.

[40 FR 51286, Nov. 4, 1975, as amended at 43 FR 37441, Aug. 23, 1978]

§ 271.21 Submission of requests to contract.

(a) Tribal requests to contract and contract applications shall be submitted to the Bureau, as follows:

(1) To the Superintendent when the tribe(s) or Indians to be served by the contract are within the jurisdiction of that Agency office. However, whether in the past they have been submitted to the Superintendent, Area Director, or the Commissioner, tribal requests and the related applications to contract for all or part of the Indian Action Team program may be submitted to the Chief, Indian Technical Assistance Center, at the option of the tribal governing body when so indicated in its resolution pursuant to § 271.18(b). All tribal requests and the related applications to contract for all or part of the Construction, Building and Utilities program which is contractable under this Part and which is within the responsibility of the Division of Facilities Engineering must be submitted to the Chief, Division of Facilities Engineering, instead to the Superintendent, Area Director, or Commissioner.

(2) To the Area Director when the tribe(s) or Indians to be served by the contract are within the jurisdiction of more than one Agency office in the same Bureau Area.

(3) To the Commissioner when the tribe(s) or Indians to be served by the contract are within the jurisdiction of more than one Area Office.

(b) An application for a contract under this Part may be submitted at any time. However, when the proposed contract may result in the displacement of Bureau personnel, the application must be submitted to the appropriate Bureau official at least 120 days before the contract's proposed starting date so the Bureau can comply with all Civil Service Commission requirements which apply to separation and/or reassignment of Federal employees. If these required actions can be completed in less than 120 days, the contract may begin at an earlier date.

[40 FR 51286, Nov. 4, 1978, as amended at 43 FR 37441, Aug. 23, 1978]

§ 271.22 Review and action by Superintendent.

The Superintendent shall take the following actions after receiving the contract application:

(a) Within five days of receipt, the Superintendent shall notify the applicant and the tribal governing body, if different from the applicant, that the application was received.

(b) Within 15 days of receipt, the Superintendent shall review the application for completeness and request any additional information from the applicant or from the requesting tribe that is needed to satisfy the requirements of § 271.14. If the application involves contracting for all or parts of the Indian Action Team program, the Superintendent shall also contact the Chief of the Indian Technical Assistance Center for the necessary information on funding. The funding information shall be obtained without sending the application to the Center.

(c) Within 30 days of receipt, the Superintendent shall review the application to determine whether funds are available at the Agency to finance the proposed contract, the effect of services to be provided by the proposed contract, the effect of the proposed contract on other services or programs provided by the Agency, and whether any deficiencies exist which could possibly result in declination.

(1) If funds are not available at the Agency to adequately finance the proposed contract without significantly reducing services under the noncontracted programs or parts of programs, the Superintendent shall so notify the applicant in writing and offer alternative solutions to the funding problem. The applicant may propose alternative

solutions to solve the funding problem. Upon receiving written notice of the applicant's choice of alternative(s), the Superintendent shall determine whether the alternative(s) chosen will solve the funding problem. If the applicant's choice of alternative(s) is sufficient to solve the funding problem, or if the solution involves reprograming which requires congressional action, the Superintendent shall take the actions in paragraphs (c)(2), (d), or (e) of this section, as appropriate. If the applicant's choice of alternative(s) will not solve the funding problem, the applicant shall be notified in writing and will be asked to reconsider the matter and select another choice. After the applicant has reconsidered and notified the Superintendent in writing of its second choice of alternative(s), the Superintendent shall determine whether the applicant's choice is sufficient to solve the funding problem. If the Superintendent determines that the applicant's second choice of alternative(s) will not solve the funding problem, or if the applicant refuses to make a selection, the Superintendent will refer the funding problem to the Area Director for a decision. The Superintendent shall notify the applicant of the referral in writing. An additional 15 days shall be allowed for the Superintendent to try to resolve the funding problem. The alternatives offered by the Superintendent may include the following which can be used alone or in combination to solve the funding problem:

(i) The Bureau may make available additional funds resulting from savings in other Bureau programs, subject to established reallocation or reprograming procedures.

(ii) The tribe(s) may obtain grant funds under part 272 of this chapter to cover any initial "start up" costs included in the proposal.

(iii) The Bureau may redesign or consolidate operations involving noncontracted programs or parts of programs.

(iv) The tribe(s) may redesign the contract proposal or consolidate all or parts of the proposal with other tribal programs.

(v) The tribe(s) may obtain additional funds from sources outside the Bureau to supplement the Bureau funds available to finance the proposal.

(vi) The tribe(s) may accept lower service levels under the proposed contract or under the noncontracted programs or parts of programs, except where such lower levels are inconsistent with the requirements of regulations or statutes, through reallocation or reprograming of Bureau funds.

(vii) The tribe(s) may choose to withdraw the contract proposal and allow the Bureau to continue to operate the program either as presently operated or as redesigned by the tribe(s).

(2) If funds are available at the Agency to adequately finance the proposed contract without significantly reducing services under the noncontracted programs or parts of programs, the Superintendent shall make in writing to the applicant and the tribal governing body those recommendations which he determines are needed in order to avoid possible declination and shall indicate the technical assistance available from the Agency Office to correct any deficiencies. This action shall also be taken within 30 days after receiving the application.

(d) The Superintendent shall provide the technical assistance offered in the written recommendation as requested by the tribal organization and tribal governing body.

(e)(1) The Superintendent shall forward the appliction to the area Office with his comments and recommendations. The recommendations shall include:

(i) A statement on the availability of Bureau equipment, facilities, and buildings requested in the application.

(ii) A recommendation on who should be the Contracting Officer's Representative.

(iii) A citation of funds to be charged.

(iv) A certification of the amount of funds actually available for the contract. if the agency funds available are less than the amount requested in the application, the Superintendent must state his efforts and extent of his suc-

cess or failure in resolving the funding problems.

(2) The Superintendent shall forward the application and his comments and recommendations within the following time limits:

(i) Within 30 days after receiving the application when the Superintendent has no recommendations to make to the applicant.

(ii) Within 10 days after making written recommendations to the applicant if the applicant does not respond, request additional time in which to respond, or refuses the technical assistance offered.

(f) Within 15 days after receiving an application to contract for all or part of the Indian Action Team Program, the Chief, Indian Technical Assistance Center shall contact the Superintendent for the tribe(s) or Indians to be served by the contract concerning the availability of the equipment, facilities, and buildings requested in the application. This contact shall be made without sending the application to the Superintendent. The Chief, Indian Technical Assistance Center, shall then forward the application to the Director, Office of Tribal Resources Development, with his comments and recommendations within the time frame prescribed in paragraph (e) of this section.

(g) Within 15 days after receiving an application, to contract for all or part of the Construction, Building and Utilities program, the Chief of the Division of Facilities Engineering shall contact the Superintendent for the tribe(s) or Indians to be served by the contract concerning the availability of the equipment, facilities, and buildings requested in the application. This contact shall be made without sending the application to the Superintendent. The Chief, Division of Facilities Engineering, shall then forward the application to the Director Office of Administration, with his comments and recommendations within the time frame prescribed in paragraph (e) of this section.

[40 FR 51286, Nov. 4, 1975, as amended at 43 FR 37441, Aug. 23, 1978]

§ 271.23 Review and action by Area Director

(a) Upon receipt of a contract application submitted directly to the Area Director as provided for in § 271.21, the Area Director shall obtain the appropriate Superintendents' recommendations within 10 days. The Area Director shall then proceed as required by paragraphs (c) and (d) of this section.

(b) Upon receipt of a contract application fowarded by a Superintendent, the Area Director will review the application and the Superintendent's recommendations and then proceed as required by paragraphs (c) and (d) of this section, except that:

(1) After receiving an application to contract for all or part of the Indian Action Team program and the comments and recommendations of the Chief, Indian Technical Assistance Center, on the application, the Director, Office of Tribal Resources Development, shall take all actions required of an Area Director by paragraphs (c) and (d) of this section.

(2) After receiving an application to contract for all or part of the Construction, Building, and Utilities program which is contractable under this part and which is within the responsibility of the Division of Facilities Engineering and the comments and recommendations of the Chief, Division of Facilities Engineering, on the application, the Director, Office of Administration, shall take all action required of an Area Director by paragraphs (c) and (d) of this section.

(c) The Area Director shall notify the applicant and the tribal governing body, if different from the applicant, that the application was received, within 5 days of its receipt.

(d) Within 30 days, the Area Director shall review the contract application, the recommendations of the Superintendent, any responses from the contract applicant or the tribal governing body and the criteria for declination set forth in § 271.15 to determine whether any declination or funding issues exist which must be addressed and at the completion of the review take one of the actions specified below in paragraphs (d)(1), (d)(2), (d)(3), (d)(4) or (d)(5), as appropriate.

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(1) The applicant will be notified in writing if the Area Director recommends that the proposed contract cannot be entered into because of the declination issues. The Area Director's recommendation may be appealed to the Commissioner, and the notice shall include a statement to that effect. The applicant shall have 30 days from receipt of notice of the Area Director's recommendation in which to exercise its appeal rights by providing the Area Director with a notice in writing to that effect. Upon receipt of notice of appeal and if an informal conference is requested, a conference shall be conducted by the Commissioner or by an official designated by him. The purpose of the informal conference will be to attempt to resolve issues without going through the formal hearing procedure. Interested parties, entitled to present their positions, shall be limited to authorized representatives of the Bureau, the tribal organization and the tribal governing body(s). If the tribal organization and the tribal governing body(s) are not satisfied with the informal conference or do not request one, the tribal organization and the tribal governing body(s) are entitled to a formal hearing in accordance with § 271.81(c).

(2) If the contract application was submitted directly to the Area Director as provided for in § 271.21, or if the Superintendent has forwarded an application with funding problems which could not be resolved at the Agency level, the Area Director will also review the application to determine whether funds are available within the Area to finance the proposed contract, the effect of services provided by the proposed contract, the effect of the proposed contract on other services or programs provided by the Area and any deficiencies which could possibly result in declination. At the completion of the review, the Area Director will take one of the following actions as appropriate:

(i) If funds are not available to adequately finance the proposed contract without significantly reducing services under the noncontracted programs or parts of programs, the Area Director shall so notify the tribal organization and the tribal governing body(s) in writing and offer alternative solutions to the funding problem. The alternatives offered by the Area Director may include those given in subdivisions (i) through (vii) of § 271.22(c)(1) which can be used alone or in combination to solve the funding problem. The tribal organization and tribal governing body(s) may also propose alternative solutions to solve the funding problem. Upon receiving written notice of the applicant's choice of alternative(s), the Area Director shall determine whether the alternative(s) chosen will solve the funding problem. If the applicant's choice of alternative(s) is sufficient to solve the funding problem, or if the solution involves reprogramming which requires congressional action, the Area Director shall take the action in paragraph (d)(3), (d)(4), or (d)(5) of this section, as appropriate. If the applicant's choice of alternative(s) will not solve the funding problem, the applicant shall be notified in writing and will be asked to reconsider the matter and make a second choice. After the applicant has reconsidered and notified the Area Director in writing of its second choice of alternative(s), the Area Director shall decide whether that choice is sufficient to solve the funding problem. If the Area Director determines that the applicant's second choice of alternative(s) will not solve the funding problem, or if the applicant refuses to make a selection, the proposed contract cannot be entered into due to the limitation that monies obligated on contracts cannot exceed available appropriations (31 U.S.C. 665(a)).

(ii) The tribal organization and the tribal governing body(s) will be notified in writing if the Area Director decides that the proposed contract cannot be entered into because of unresolved funding problems. The Area Director's decision may be appealed to the Commissioner, and the notice shall include a statement to that effect. The applicant shall have 30 days from receipt of notice of the Area Director's decision in which to exercise its appeal rights by providing the Area Director with a notice in writing to that effect.

Upon receipt of notice of appeal, an informal conference shall be conducted by the Commissioner or by an official designated by him. The purpose of the informal conference will be to attempt to resolve issues without going through the formal hearing procedure. Interested parties entitled to present their positions, may attend the informal conference and present their position If the applicant is not satisfied with the informal conference, the applicant is entitled to a formal hearing in accordance with § 271.81(c).

(3) If the tribal organization and tribal governing body(s) choice of alternatives includes the reprogramming of funds, the Area Director shall forward the reprogramming request, the reasons for the request, and his recommendations to the Commissioner for further action as given in § 271.25(c)(1). The Commissioner or an official designated by him may hold an informal conference with the applicant prior to making a final decision on a reprogramming request if the conference is requested by the applicant. If appropriate congressional committees grant the reprogramming request, the Area Director shall take the actions in paragraph (d)(4) or (d)(5) of this section as appropriate. If Congress does not grant the reprogramming request, the contract cannot be made and the Area Director shall so notify the applicant in writing.

(4) If funds are available to adequately finance the proposed contract without significantly reducing services under the noncontracted programs or parts of programs and there are no declination issues, the Area Director will notify the contract applicant in writing of this fact. Before the negotiations take place, the Area Director shall give the applicant a copy of any documents to be used by the Bureau during negotiations. The Area Director shall negotiate and award the contract within 30 days of notifying the applicant unless a later date is requested by the applicant.

(5) If the funds are available to adequately finance the proposed contract without significantly reducing services under the noncontracted programs or parts of programs but it is felt that there are declination issues which must be resolved, the Area Director will notify the tribal organization and tribal governing body(s) of this fact in writing. The notice shall include a list of the declination issues identified by the Area Director, the reason(s) for such determination, a copy of any documents used in arriving at the issues, recommendations for resolving the issues, and the technical assistance available for this purpose.

(i) If the applicant accepts the Area Director's offer of technical assistance, it shall be provided in accordance with the applicant's request. At such time as the issues are thus resolved, the Area Director will so advise the applicant and offer to enter into negotiations within 30 days of resolution or unless the applicant requests additional time.

(ii) If the applicant declines the Area Director's offer of technical assistance and the matter is not otherwise resolved, the Area Director shall proceed in accordance with § 271.24.

(iii) If the applicant does not respond within 30 days of receipt of the Area Director's recommendation and offer of assistance, and does not request additional time in which to respond, the Area Director shall proceed in accordance with § 271.24.

(iv) If the applicant does not agree with the Area Director's recommendations and the matter is not resolved within 30 days of the Area Director's recommendations, the Area Director shall proceed in accordance with § 271.24.

[43 FR 37442, Aug. 23, 1978, as amended at 45 FR 13449, Feb. 29, 1980]

§ 271.24 Area Director's recommendation to decline.

(a) If the Area Director, the applicant and the tribal governing body fail to resolve the declination issues, the Area Director shall prepare a written recommendation to decline.

(b) This recommendation shall contain, at a minimum, the following information:

(1) Identification of specific objections, categorized under one or more of the declination factors set forth in § 271.15.

(2) Specific recommendations on actions required by the applicant or tribe to overcome objections.

(3) Description of the nature, scope, and source of the technical assistance which has been provided or offered by the Bureau to assist the tribal organization to overcome declination objections.

(4) Copies of all correspondence between the Agency, area, and applicant, and/or tribe, and all responses thereto, including any reports of meetings between the parties relative to the application.

(5) Copy of original application.

(c) The Area Director shall send the written recommendation to the Commissioner within 15 days after the time period provided in § 271.23(d)(5)(iii) and (iv). At the same time, he shall send a copy of the written recommendation to the tribal organization and tribal governing body.

(d) Within 15 days of receipt of the Area Director's recommendation to decline, the applicant may notify the Commissioner and the Area Director that it accepts the offer of technical assistance described in paragraph (b)(3) of this section, thereby staying the declination process. To reconstitute the application process the applicant must notify the Area Director, at which time the Area Director shall proceed in accordance with § 271.23.

[40 FR 51286, Nov. 4, 1975, as amended at 43 FR 37444, Aug. 23, 1978; 45 FR 13450, Feb. 29, 1980]

§ 271.25 Review and action by Commissioner.

(a) Within five days after receiving a contract application submitted directly under § 271.21, or after receiving a contract application with either the Area Director's recommendation to decline or the Area Director's decision that the contract cannot be entered into because of unresolved funding problems, the Commissioner shall notify the tribal organization (unless restricted by the tribal resolution under § 271.18(c)(2) or subsequent resolutions) and tribal governing body(s) in writing of the receipt of the application.

(b) An application submitted directly to the Commissioner under § 271.21(a)(3) will be handled by the Directorate(s) within the Bureau in whose substantive jurisdiction the subject matter of the proposed contract falls. That Director will perform all of the actions of the Area Director specified in § 271.23.

(c) For an application referred by an Area Director, the Commissioner will perform one of the following actions as required by § 271.23.

(1) In case of insufficient funds, the Commissioner shall within 30 days review the factual record developed in the formal hearing. The Commissioner shall consider whether funds are available to finance the proposed contract. If the solution to the funding problem chosen by the applicant involves reprogramming, the Commissioner, if he concurs, will forward the reprogramming request with the reasons for the request through the Department to the Office of Management and Budget for referral to the appropriate congressional committees for approval. The applicant shall be notified in writing if the Commissioner decides that the proposed contract cannot be made because of unresolved funding problems.

(2) When the Commissioner does not accept the Area Director's advice of insufficient funding, following the review of the factual record developed under § 271.81, notice shall be given that the recommendations are not accepted and that the Bureau shall negotiate and award the contract within 45 days, unless the applicant requests additional time.

(3) If the Commissioner determines that the application cannot be accepted, the insufficient funding notice shall be issued as follows:

(i) Within 30 working days as provided under § 271.81(d).

(ii) The advice of insufficient funding notice shall be in writing and shall contain:

(A) Identification of the specific objections that the contract cannot be entered into due to the limitation that monies obligated cannot exceed appropriations under 31 U.S.C. 665(a).

(B) Specific recommendations on actions required by the applicant to overcome objections and a description of the nature, scope, and source of the

technical assistance which will be available to overcome objections.

(C) Copies of the transcript of the formal hearing and all documentary evidence introduced as provided under § 271.81(c)(vi).

(d) When declination issues are involved, within 15 days after receiving the formal hearing record, the Bureau shall notify the tribal organization (unless restricted by the tribal resolution under § 271.18(c)(2) or subsequent resolutions) or tribal governing body(s) and the Area Director(s) of the Commissioner's decision.

(1) When the Commissioner does not accept the Area Director(s) recommendation to decline, following the review of the factual record developed under § 271.81(c)(1), notice shall be given that the recommendations are not accepted and that the Bureau shall negotiate and award the contract within 45 days unless the applicant requests additional time.

(2) If the Commissioner determines under § 271.81(d) that the application should be declined, the declination notice shall be issued as follows:

(i) Within 30 working days as provided under § 271.81(d).

(ii) Within 30 days after notifying the applicant under paragraph (d)(2) of this section when the applicant has not used the right under paragraph (d)(2).

(3) The declination notice shall be in writing and shall contain:

(i) Identification of specific objections, categorized under one or more of the declination criteria set forth in § 271.15.

(ii) Specific recommendations on actions required by the applicant to overcome objections and a description of the nature, scope, and source of the technical assistance which will be available to overcome declination objections.

(iii) Copies of the transcript of the formal hearing and all documentary evidence introduced as provided under § 271.81(c)(vii).

[45 FR 13450, Feb. 29, 1980]

§ 271.26 [Reserved]

§ 271.27 Technical assistance after declination.

If the Commissioner's decision to decline to contract is not appealed or is upheld on appeal, the Commissioner shall immediately offer technical assistance to the tribal governing body for the purpose of overcoming the declination issues. Within 30 days of the tribal governing body's acceptance of this offer, the Commissioner will make technical assistance available to the tribal governing body for the development of a plan for overcoming the objections that resulted in the decision to decline.

§ 271.28 Failure of Bureau Agency or Area Office to act.

Whenever a Bureau Agency or Area Office official fails to take action on a contract application within the time limits established in this Part, the tribal organization that submitted the application, may, at its option, request action by the next higher Bureau official. In such cases, the official that failed to act shall immediately forward the application and all material pertinent thereto to the official to whom the request for action was made.

Subpart C—Additional Requirements for Trust Responsibilities

§ 271.31 Applicability.

This Subpart gives additional requirements applicable to the application and approval process for contracts under this Part which involve the Bureau's trust responsibilities in the area of natural resources, such as assessments, irrigation, real estate, forestry, range management, wildlife and parks, water inventories, and hunting and fishing.

§ 271.32 Contractable functions or programs.

Contractable trust resources programs, or portions thereof, include the following:

(a) Assessments: inventories of existing resources in trust for individuals and for tribes.

(b) Soil and moisture conservation: basic soil and water conservation, watershed protection, flood prevention, cooperative surveys and investigations, and resource conservation and development.

(c) Irrigation: development, construction, recordkeeping, rehabilitation, operations, and maintenance.

(d) (1) Real estate: land use planning and zoning, maintenance of land records, preparation of abstracts of title, research programs to determine heirship and inventory of estates, collection of technical data, and studies to be used in determinations of tribal claims to real property, collection of data leading to ascertainment of surface and subsurface resources, and administration of leases.

(2) Advice and technical assistance provided individual landowners in connection with lease negotiations initially will be made concurrently by the contractor and an appropriately designated Federal official.

(e) Forestry: Forest management and planning, including the making of inventories, management plans and maintenance, tribal or individual Indian consultation services, administration of timber sales and Indian permit cutting, conduct of timber stand improvement projects, protection of the forest against wildfire, trespass, disease, or insect infestation, and participation in cooperative programs with other Federal, State, or tribal organizations related to programs of the Bureau. Activities which already are provided Indian forests from non-Bureau sources, as part of the management of a forested area larger than the reservation, are not contractable under provisions of this Part. Advice and technical assistance provided individual landowners in connection with forestry programs will be made concurrently by the contractor and an appropriately designated Federal official.

(f) Range management:

(1) Range resource inventories, range utilization inspections, and trend studies.

(2) Range management plans.

(3) Development of contract stipulations for agricultural leases and permits (land use stipulations or conservation standards necessary to define each use shall be incorporated in and made a part of such lease or permit).

(4) Supervision of compliance, to include:

(i) Establishment of range units.

(ii) Establishment of grazing capacity and season of use.

(iii) Preparation, assignment, modification, and cancellation of grazing permit contracts.

(iv) Preparation of Authority to Grant Grazing Privileges on Allotted Lands. Obtain approval of landowner(s).

(v) Development of allocation of grazing privileges.

(vi) Processing of competitive and negotiated sales of grazing privileges.

(vii) Proposal of revision to grazing permit forms.

(viii) Determination of kind of livestock to be grazed on tribal and Government land, and recommendation of kind of livestock to be grazed on individually owned land.

(ix) Establishment of grazing fees on tribal lands, recommendation of grazing fees on individually owned lands not containing stipulated rates, and to non-Indian owned livestock which allocated permittees may be authorized to graze on tribal lands.

(x) Prescription of duration of grazing permits.

(xi) Establishment of bonding and insurance requirements.

(xii) Determination of ownership of range improvements.

(xiii) Investigation and processing of livestock trespass action.

(xiv) Requirement of participation in control of livestock diseases.

(5) Fee collection and disposition as directed by the Bureau, to include:

(i) Tribal fees and taxes.

(ii) Annual grazing fees.

(iii) Annual permit preparation fees.

(iv) Liquidated damages for excess stocking.

(v) Livestock trespass damage to property injured or destroyed, trespass penalty, and value of forage consumed.

(6) Watershed management.

(7) Wildfire prevention and control.

(g) Wildfire and parks:

(1) Game, fish, and outdoor recreation inventories.

(2) Game and fish management plans.

(3) Outdoor recreation planning, development, and management.

(4) Conservation, use, development, and management of fish and wildlife resources.

(5) Preservation of natural beauty, historical sites, and archeological remains.

(6) Wildlife prevention and control.

(h) Water inventories and other appropriate programs for protection of water rights.

(i) Hunting and fishing: programs to regulate and enforce on- and off-reservation hunting and fishing and programs to provide data supporting litigation concerning hunting and fishing issues.

[40 FR 51286, Nov. 4, 1975, as amended at 43 FR 37444, Aug. 23, 1978]

§ 271.33 Content of application.

In addition to the information required in § 271.14, the following additional information shall be included in the contract application when a trust resource or responsibility is involved:

(a) A statement of the impact of proposed activity on trust resources related to:

(1) Maintenance of inventory levels and values to tribes and to individuals; and,

(2) Income to individuals and tribe. The statement must also demonstrate a thorough assessment of the trust resources issues, positive steps to protect the trust resources, provisions that limit or eliminate potential for conflicts-of-interest, and that no delegation of trust responsibility is requested.

(b) A statement of the special skills and qualifications required of personnel attached to program activity impacting on trust resources and trust responsibility.

§ 271.34 Criteria for declining to contract.

If a contract application includes a project or function which is related to the Bureau's performance of a trust responsibility in the area of natural resources as given in § 271.32, the Commissioner shall decline to contract if he finds that:

(a) The contract application provides for or would necessarily require the delegation to the tribal organization of a trust responsibility vested by law in the Secretary or the Commissioner.

(b) The contract application provides for the termination of a trust responsibility.

(c) The contract application provides for completion or maintenance of the project or function to a lesser standard than under Bureau administration. However, a tribal proposal to raise performance standards shall not be used as a reason for declination.

(d) The proposed activity requires special skills for its performance and the proposed key staff does not meet Civil Service Commission or excepted qualification standards, other accepted professional standards appropriate to the discipline involved, or are not otherwise recognized as technically qualified.

(e) If the contract application is for range management and includes work performed under paragraph (f)(4) or (f)(5) of § 271.32, the applicant must agree in the contract application to the Contracting Officer's review and approval of such work.

[43 FR 37444, Aug. 23, 1978]

Subpart D—General Contract Requirements

§ 271.41 Advance payments.

(a) At the request of a tribal contractor, the Bureau contracting officer shall make advance payments under contracts as provided in this section. The requirements given in this section and in Chapter 2000 of the Treasury Fiscal Requirements Manual, as modified or supplemented, apply to making the advance payments.

(b) Any request for advance payment by a tribal contractor shall specify the amount(s) required and the dates such advance(s) will be required and shall be supported by a schedule of estimated expenditures.

(c) An initial advance will be limited to the amount of estimated expenditures for a sufficient period of time required to effect payment, based on experience in the locality. The initial ad-

vance may be made in amounts and at times determined suitable to satisfy the minimum essential needs of the contractor.

(d) Later advances may be made at times and in amounts determined necessary to insure availability of funds for timely payment of the tribal contractor's obligations and to minimize the time between withdrawal from the Treasury and expenditure. Requests for advances after an initial advance shall be accompanied and supported by a report of expenditures to date and the amount of funds on hand. For advance payment methods other than the Letter of Credit method, requests for advances made after an initial advance shall be accompanied and supported by a report of expenditures to date, the amount of funds on hand, and the anticipated needs until receipt of payment.

(e) Advance payments shall be made as follows:

(1) When the annual advance to a tribal contractor is expected to exceed $120,000 in the aggregate and the contract term is for at least one year, the letter-of-credit method normally shall be used. The requirements contained in Chapter 2000 of the Treasury Fiscal Requirements Manual, as modified or supplemented, shall apply to making these advance payments.

(2) Except as provided in paragraph (e)(1) of this section, advance payments shall be made by check made payable to the tribal contractor and handled as follows:

(i) Advance payments may be made directly to the tribal contractor when the contractor is a tribal governing body, a non-profit Indian organization serving as a governmental instrumentality of an Indian tribe or an intertribal council. However, when the contractor is *not* one of the above, the advance payment may be made directly if all of the following conditions exist:

(A) The advance payment does not exceed $2,500.

(B) It is the only advance payment involved in the contract.

(C) The performance time is less than 90 days.

(D) The advance payment does not exceed 85 percent of the amount of the contract.

(ii) Checks for advance payments which cannot be made directly to the tribal contractor, as given in paragraph (e)(2)(i) of this section, shall be marked for deposit in a special bank account established for the contract. No part of the funds deposited in the special bank account shall be mingled with other funds of the tribal contractor before the funds are withdrawn to meet obligations under the contract.

(f) Tribal contractors shall not be held accountable for interest earned on funds advanced pending disbursement. However, bank balances must be maintained at the minimum level consistent with program requirements. Requests for advances shall be reviewed to insure that excess funds are not advanced.

(g) Sub-advances may be made when predetermined as a part of contracted programs or when specifically authorized in writing by the contracting officer. Sub-advances will not be made to individuals except for approved travel. In such cases, the sub-advances shall not exceed the minimum required for one trip and shall be settled by voucher or repayment within 30 days.

[40 FR 51286, Nov. 4, 1975, as amended at 43 FR 37444, Aug. 23, 1978]

§ 271.42 Use of Government property.

(a) In carrying out a contract made under this Part, the Superintendent, Area Director or Commissioner shall, wherever possible, permit a tribal contractor to use existing buildings, facilities, and related equipment and other personal property owned by the Bureau within his jurisdiction. To the extent possible, arrangements on the use of Bureau property shall be provided for in the contract agreement. In determining whether real or personal property can be provided, the Bureau shall determine whether it can provide comparable services for any of the uncontracted part(s) of the program.

(b) Requests for the use of Bureau property which arise after signing of the contract shall be submitted to the relevant Bureau official by the tribal organization. Such requests should be granted and the contract appropriately amended unless such use will seriously interfere with the administration of existing Bureau programs. The

property at the time of transfer must conform to the minimum standards established by the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

§ 271.43 Wage and labor standards.

(a) All laborers and mechanics employed by tribal contractors or subcontractors in the construction, alteration, or repair of buildings or other facilities in connection with contracts under this Part shall be paid wages not less than those on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended. However, this requirement does not apply where the tribal contractor is the recognized governing body of the tribe or a non-profit Indian organization serving as a governmental instrumentality of an Indian tribe and the construction, alteration, or repair work is being performed by the tribal organization or the tribe with its own employees.

§ 271.44 Indian preference.

(a) Any contract made by the Bureau with a tribal organization shall provide that the tribal contractor shall, to the greatest extent feasible, give preference in and opportunities for employment and training to Indians.

(b) Any contract made by the Bureau with a tribal organization shall provide that the tribal contractor shall, to the greatest extent feasible, give preference in the award of subcontracts to Indian organizations and to Indian-owned economic enterprises.

(c) All subcontractors employed by the tribal organization shall, to the extent possible, give preference to Indians for employment and training and shall be required to include in their bid submission a plan to achieve maximum use of Indian personnel.

(d) In the performance of contracts under this Part 271 and subject to the provisions of Part 14 H-70 of Title 41, a tribal governing body may develop its own Indian preference requirements to the extent that such requirements are not inconsistent with the purpose and intent of paragraphs (a), (b), and (c) of this section.

§ 271.45 Liability and motor vehicle insurance.

(a) Tribal organizations shall obtain public liability insurance under contracts entered with the Bureau under this Part. However, where the contracting officer determines that the risk of death, personal injury or property damage under the contract is small and that the time and cost of procuring the insurance is great in relation to the risk, the contract may be exempted from this requirement.

(b) Notwithstanding paragraph (a) of this section, any contract which requires or authorizes, either expressly or by implication, the use of motor vehicles must contain a provision requiring the tribal organization to provide liability insurance, regardless of how small the risk.

§ 271.46 Recordkeeping.

A tribal contractor will be required to maintain a recordkeeping system which will allow the Bureau to meet its legal records program requirements under the Federal Records Act (44 U.S.C. 3101 et seq.) and to facilitate contract retrocession or reassumption under Subpart F of this Part. Such a record system shall:

(a) Fully reflect all financial transactions involving the receipt and expenditure of funds provided under the contract in a manner which will provide accurate, current and complete disclosure of financial status; correlation with budget or allowable cost schedules; and clear audit facilitating data.

(b) Reflect the amounts and sources of funds other than contract funds which may be included in the operation of a program.

(c) Provide for the creation, maintenance and safeguarding of records of lasting value, including those involving individual rights, such as permanent student records and transcripts.

(d) Provide for orderly retirement of records used or created under the contract. Such records shall be returned to the Bureau for disposition according to the General Records Schedules and the Bureau Records Control Schedules.

(e) Provide recordkeeping adequate to verify the fairness and uniformity of services provided to the Indians affected by the contract in case of formal complaints.

[40 FR 51286, Nov. 4, 1975, as amended at 43 FR 37444, Aug. 23, 1978]

§ 271.47 Records—access to and retention.

(a) During the term of a contract under this Part and for three years after the project or undertaking is completed, the Comptroller General, the Secretary and the Commissioner or any of their duly authorized representatives shall have access, for audit and examination purposes, to any of the tribal contractor's books, documents, papers, and records which are related or pertinent to the contract or any subcontract, with the following exceptions:

(1) The records shall be retained beyond the three year period if audit findings have not been resolved.

(2) When records are transferred to or maintained by the Bureau, the three year retention requirement does not pertain to the contractor for those records.

(b) The tribal contractor will be responsible for maintaining all documents such as invoices, purchase orders, cancelled checks, balance sheets and all other records relating to financial transactions in a manner which will facilitate auditing. The tribal contractor will be responsible for maintaining files of correspondence and other documents relating to the administration of the program or project properly separated from general records or cross-referenced to general files.

§ 271.48 Freedom of information.

(a) Unless otherwise required by law, the Bureau shall not place restrictions on tribal contractors which will limit public access to the tribal contractors' records except when records must remain confidential

(b) A tribal contractor under this Part shall make all reports and information concerning the contract, including the report required under § 271.49, available to the Indian people which the contractor serves or represents. Reports and information may be withheld from disclosure only when both of the following conditions exist:

(1) The reports and information fall within one of the following exempt categories:

(i) Specifically required by statute or Executive Order to be kept secret.

(ii) Related solely to internal personnel rules and practices of the Bureau.

(iii) Commercial or financial information obtained from a person or firm or a privileged or confidential basis.

(iv) Memoranda or letters between agencies of the Federal Government which would not be available by law to a party other than the Federal Government in litigation with the Federal Government.

(v) Personnel, medical, and similar files where disclosure would be a clearly unwarranted invasion of personal privacy.

(vi) Investigatory records compiled for law enforcement purposes when production of the records would:

(A) Interfere with enforcement proceedings;

(B) Deprive a person of a right to a fair trial;

(C) Be an unwarranted invasion of personal privacy;

(D) Disclose the identity of a confidential source and confidential information furnished only by the confidential source;

(E) Disclose investigative techniques and procedures; or

(F) Endanger the life or physical safety of law enforcement personnel.

(vii) Contained in or related to examination, operating, or condition reports prepared for the use of an agency of the Federal Government responsible for the regulation or supervision of financial institutions.

(viii) Geological and geophysical information and data concerning wells.

(2) Disclosure is prohibited by statute or Executive Order or sound grounds exist for using the exemption given in paragraph (b)(1) of this section.

(c) A request to inspect or copy reports and information shall be in writing and must reasonably describe the reports and information requested. The request may be delivered or mailed to the tribal contractor. Within ten working days after receiving the

request, the tribal contractor shall determine whether to grant or deny the request. The requester shall be notified immediately of the determination.

(d) The time limit for making a determination may be extended up to an additional ten working days for good reason. The requester shall be notified in writing of the extension, reasons for the extension, and date on which the determination is expected to be made.

§ 271.49 Annual reporting.

(a) For each fiscal year during which a tribal organization receives or expends funds pursuant to a contract under this Part, the tribe which requested the contract must submit a report to the Commissioner. The report shall include, but not be limited to, an accounting of the amounts and purposes for which the contract funds were expended, the tribe's evaluation of the contract performance using the criteria submitted in the contract application, and information on the conduct of the program or services involved. The report shall include any other contract-related information requested by the Commissioner and may be submitted as follows:

(1) When the contract is with the governing body of an Indian tribe, the tribe shall submit the report to the Area Director.

(2) When the contract is with a tribal organization other than the governing body of the tribe, the tribe has the option of having the tribal organization prepare the report and submit it to the tribe for review and approval before the tribe submits it to the Area Director or Commissioner as appropriate.

(3) When the contract benefits more than one tribe, the tribal organization shall prepare and submit the report to each of the tribes benefiting under the contract. Each tribe shall endorse the report before submitting it to the Area Director or Commissioner as appropriate. Should any of the tribes fail to endorse the report within 75 days of its receipt, the tribal organization may submit the report with the endorsements that have been received.

(b) The annual report shall be submitted to the Area Director or Commissioner as appropriate within 90 days after the end of the fiscal year in which the contract was performed. However, upon receipt of a written request, the period for submitting the report may be extended by the Area Director or the Commissioner if there is just cause for such extension.

(c) In addition to the yearly reporting requirement given in paragraphs (a) and (b) of this section, the contract shall provide that the tribal contractor will make available monthly, to members of the tribe(s) affected, an accounting of the amounts and the purposes for which the contract funds were expended during the previous monthly period in the following manner:

(1) By posting a notice containing such information on or before the tenth of each month, at a conspicuous place readily accessible to members of the tribe(s) affected; or,

(2) By such other means as is mutually agreed to by the tribal contractor and the Bureau.

(d) In addition to the requirements contained in paragraphs (a), (b) and (c) of this section, the tribal contractor shall furnish other contract-related reports when and as required by the Area Director or Commissioner

§ 271.50 Penalties.

If any officer, director, agent, or employee of, or connected with, any contractor or subcontractor under this Part embezzles, willfully misapplies, steals, or obtains by fraud any of the funds or property connected with the contract or subcontract, he shall be subject to the following penalties:

(a) If the amount involved does not exceed $100 he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) If the amount involved exceeds $100, he shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

§ 271.51 Federal contracting laws and regulations.

(a) Contracts with a tribal organization under this Part shall comply with the Bureau procurement regulations contained in 41 CFR Part 14H-70, except as provided in paragraph (b) of this section.

(b) The Commissioner may waive any Federal contracting laws, executive orders, regulations, rules and other administrative requirements which he determines are not appropriate for the purposes of the contract involved or are inconsistent with the Act. Regulations and clauses which are deemed inconsistent or inappropriate for inclusion in contracts entered into under the Act may be waived, modified or supplemented in 41 CFR Part 14H-70 of the Bureau's procurement regulations. Requests for waivers may be made as follows:

(1) Tribal organizations may submit written requests for a waiver or modification of contract regulations on specific contracts to the Commissioner through, or jointly with, the contracting officer. The contracting officer will promptly transmit the request and his recommendations on it to the Commissioner, who shall issue a ruling within 15 days after receipt of the request.

(2) When the waiver or modification requested is determined by the Commissioner to apply in general, it will be made a part of 41 CFR Part 14H-70. When the Commissioner determines that the request for modification or waiver should not apply in general but is warranted for the contract to which the request pertains, the tribal organization and the contracting officer will be so advised in writing.

(3) If the request for waiver or modification is determined by the Commissioner not to be appropriate, the tribal organization will be notified in writing.

(c) Contracts will be negotiated on a non-competitive basis without advertising when the contracts are requested by a tribal governing body in accordance with § 271.18.

(d) A tribal organization is not required to furnish performance and payment bonds before carrying out a contract under this Part for the construction of public buildings or works as required by the Miller Act of August 24, 1935 (49 Stat. 793), as amended. However, the tribal organization shall require each of its subcontractors to furnish both performance and payment bonds as follows:

(1) A performance bond with a surety or sureties satisfactory to the approving official, and in an amount he deems adequate, for the protection of the United States.

(2) A payment bond with a surety or sureties satisfactory to the approving official for the protection of all persons supplying labor and material in carrying out the contract. Whenever the total amount payable by the terms of the contract is not more than $1,000,000, the payment bond shall be one-half the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract is more than $1,000,000 but not more than $5,000,000, the payment bond shall be 40 percent of the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract is more than $5,000,000, the payment bond shall be $2,500,000.

§ 271.52 Term of contract.

(a) The term of contracts under this Part shall not exceed one year except that contracts may be made for a longer term up to three years, subject to availability of funds under the following circumstances:

(1) The services provided under the contract can reasonably be expected to be continuing in nature and, as a result, a longer contract term would be advantageous.

(2) The Indian tribe(s) to be served by the contract request that the term be more than one year. The tribal organization will indicate the desired term of the contract on the application form. When the Indian tribe(s) request that the contract be approved as provided in § 271.18, that will also be deemed a request for the longer term indicated in the application.

(b) Contracts made for a term of more than one year may be renegotiated annually to reflect factors, including, but not limited to, cost increases beyond the control of the tribal contractor. Proposed changes in the services provided under the contract which reflect changes in program emphasis may be considered during the annual renegotiation if the changes fall within the general scope of the contract. Such changes may be initiat-

ed by either the tribal contractor or the Bureau but must be agreed to by both.

§ 271.53 Performing personal services.

Any contract made under this Part may include provisions for the performance of personal services which would otherwise be performed by Federal employees. Such services include, but are not limited to, performing the following functions in accordance with the contract and applicable rules and regulations:

(a) Determining the eligibility of applicants for assistance, benefits, or services.

(b) Determining the extent or amount of assistance, benefits, or services to be provided.

(c) Determining the provisions of such assistance, benefits, or services.

§ 271.54 Contract funds.

The tribal organization shall be entitled to be funded for direct and indirect costs under the contract as follows:

(a) Direct costs under contracts for operations of programs or parts shall not be less than the Bureau would have provided if the Bureau operated the program or part during the contract. Direct costs shall include the Bureau's direct costs for planning, administering, and evaluating the program or part and shall not be used to reduce indirect costs otherwise allowable to the tribal organization.

(b) Direct costs under contracts for operation of programs or parts operated by the Bureau before contract operations shall be not less than the funds that are programmed and available for the program or part at the time of the contract application, except as limited in paragraph (g) of this section.

(c) Direct costs under contracts for the operation of programs or parts authorized to be operated by the Bureau, but not operated by the Bureau, for the benefit of the Indians to be served under the contract shall be determined by mutual agreement based on a comparison of similar programs operated by the applicant, the requesting tribe, other tribes, the Bureau, other governmental, public or private organizations.

(d) Direct costs for programs or parts to be contracted at the Agency Office level shall be based on the funds available at that level.

(e) Direct costs for programs or parts to be contracted at the Area Office level shall be based on funds available at that level.

(f) Allowability of costs under contracts shall be determined under Appendix A of Part 276 of this chapter.

(g) Funds provided under contract for direct or indirect costs shall not cause a reduction in funds provided for other programs or parts not under contract, except as agreed to by the affected tribe(s) and within the existing authorities of the Bureau.

(h) Social services grant funds distributed through a contract under this Part shall not be considered a direct cost for the purposes of this section.

[40 FR 51286, Nov. 4, 1975, as amended at 43 FR 37444, Aug. 23, 1978]

§ 271.55 Savings under contract.

(a) If it becomes apparent during the contract term that the estimated amount of a contract under this Part will be in excess of actual expenditures under the contract, the identified savings shall be used to provide additional services or benefits under the contract.

(b) When both the tribal organization and the Bureau agree that it is not practicable to spend the savings during the contract term and the contract funds were appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208), the savings may be carried over into the succeeding fiscal year contract, except as otherwise specifically provided in appropriation acts. Savings carried over into a succeeding fiscal year shall be added to the contract amount for that fiscal year. The savings shall not reduce the amount that would have been made available if there had been no savings.

(c) If there are savings under a contract that is retroceded as provided in § 271.71, the savings shall be used by the Bureau to operate the program or part of a program covered by the retroceded contract. the savings shall be carried over and used for such operations during the succeeding fiscal year, except as otherwise specifically provided in appropriation acts.

(d) Social services grant funds in excess of those required to meet the financial assistance needs of the Indian clients served by a contract under this part shall not be considered as savings for the purposes of this section. Excess social services grant funds will be deobligated from the contract.

[40 FR 51286, Nov. 4, 1975, as amended at 43 FR 37445, Aug. 23, 1978]

§ 271.56 Privacy Act requirements.

(a) when a tribal contractor operates a system of records to accomplish a Bureau function, the contractor shall comply with subpart D of 43 CFR Part 2 which implements the Privacy Act (5 U.S.C. 552a). Examples of the tribal contractor's responsibilities are:

(1) To continue maintaining those systems of records declared by the Bureau to be subject to the Privacy Act as published in the FEDERAL REGISTER.

(2) To make such records available to individuals involved.

(3) To disclose an individual's record to third parties only after receiving permission from the individual to whom the record pertains. 43 CFR 2.56 lists exceptions to this procedure.

(4) To establish a procedure to account for access, disclosures, denials, and amendments to records.

(5) To provide safeguards for the protection of the records.

(b) The tribal contractor may not:

(1) Discontinue or alter any established systems of records without prior approval of the appropriate Bureau systems manager.

(2) Deny requests for notification or access of records without prior approval of the appropriate Bureau systems manager.

(3) Approve or deny requests for amendments of records without prior approval of the appropriate Bureau systems manager.

(4) Establish a new system of records without prior approval of the Department of Interior and the Office of Management and Budget.

(5) Collect information about an individual unless it is relevant or necessary to accomplish a purpose of the Bureau as required by statute or Executive Order.

(c) The tribal contractor is subject to the penalties provided in subsection (i) of 5 U.S.C. 552a.

Subpart E—Contract Revision or Amendment

§ 271.61 Requesting revision or amendment.

(a) Any contract made under this Part may be revised or amended as deemed necessary to carry out the purposes of the program, project or function being contracted.

(b) The contractor shall submit proposed revisions and amendments to the Bureau as follows:

(1) To the contracting officer in the Area Office when the tribe(s) or Indians served by the contract are within the jurisdiction of that Area Office.

(2) To the contracting officer in the Bureau's headquarters in Washington, D.C. when the tribe(s) or Indians served are within the jurisdiction of more than one Area Office.

(c) The contractor shall send copies of all requests for revisions or amendments to the designated representative of the tribal governing body at the same time as they are sent to the appropriate contracting officer.

§ 271.62 Review and action by contracting officer.

Upon receipt of the proposed revision or amendment from the contractor, the contracting officer shall, unless the tribal resolution under § 271.18(c)(2) or any subsequent amendment restricts such action, proceed as follows:

(a) Within five days, notify in writing the contractor and the tribal governing body(s) if different from the contractor, of receipt of the proposed revision or amendment and that the tribal governing body(s) shall have 15 days from receipt of the notice to send any written objections to the contracting officer. If the tribal governing body(s) object to the proposed revision or amendment, the contracting officer shall so notify the contractor and the proceedings under this subpart shall cease.

(b) Within 30 days after the tribal governing body(s) received the notice,

if no objections are received, review the proposed revision or amendment and the criteria for declination given in § 271.15. At the completion of the review, the following action will be taken as appropriate:

(1) If there are no declination issues, the contracting officer will notify the contractor and the tribal governing body(s) in writing of this fact and revise or amend the contract within 30 days of issuing the notice or at their convenience.

(2) If it is felt that there are declination issues that must be resolved, the contracting officer will notify the contractor and the tribal governing body(s) of this fact and the extent of the issues, recommend a course of action to resolve the issues and offer technical assistance to resolve the issues within 30 days after issuing the notice.

(i) If the contractor and the tribal governing body(s) accept the technical assistance, it shall continue in accordance with their request. At such time as the issues are thus resolved the contracting officer will so advise the contractor and the tribal governing body(s) and revise or amend the contract within 15 days of resolution or at their convenience.

(ii) If the contractor and the tribal governing body(s) decline the contracting officer's offer of technical assistance and the matter is not otherwise resolved, the contracting officer shall proceed in accordance with § 271.63.

(iii) If the contractor and the tribal governing body(s) do not respond within 30 days of receipt of the contracting officer's recommendations and offer of assistance and do not request additional time in which to respond, the contracting officer shall proceed in accordance with § 271.63.

(iv) If the contractor and the tribal governing body(s) do not agree with the contracting officer's recommendations and the matter is not resolved within 30 days of the contracting officer's receipt of their response to the contracting officer's recommendations, the contracting officer shall proceed in accordance with § 271.63.

§ 271.63 Contracting officer's recommendation to decline.

(a) If the contracting officer, the contractor, and the tribal governing body fail to resolve the declination issues, the contracting officer shall prepare a written recommendation to decline.

(b) This recommendation shall contain, at a minimum, the following information:

(1) Identification of specific objections, categorized under one or more of the declination factors set forth in § 271.15.

(2) Specific recommendations on actions required by the contractor or tribe(s) to overcome objections.

(3) Description of the nature, scope, and source of the technical assistance which has been provided or offered by the Bureau to assist the contractor and the tribal governing body(s) to overcome the declination objections.

(4) Copies of all correspondence between the contracting officer and contractor and tribal governing body(s) and all responses thereto, including any reports of meetings between the parties relative to the proposed revision or amendment.

(5) Copy of original proposed revision or amendment.

(c) The contracting officer shall make written recommendations to:

(1) The Area Director when the tribe(s) or Indians served by the contract are within the jurisdiction of that Area Office.

(2) The Commissioner when the tribes or Indians served are within the jurisdiction of more than one Area Office.

§ 271.64 Review and action by Area Director or Commissioner.

(a) Within five days after receiving a proposed revision or amendment and the contracting officer's recommendations to decline, the Area Director or Commissioner as given in § 271.61 shall notify the contractor and the tribal governing body(s) in writing of the receipt of the proposed revision or amendment.

(b) Within 15 days after receiving the contracting officer's recommendations, the Area Director or Commissioner shall review the application, the

contracting officer's recommendations, and the declination criteria in § 271.15.

(c) Within 15 days after receiving the contracting officer's recommendations, the Area Director or Commissioner shall notify the contractor, the appropriate tribal governing body(s), and the contracting office of one of the following:

(1) When the Area Director or Commissioner does not accept the contracting officer's recommendations to decline or to recommend not to contract because of funding problems, notice shall be given that the recommendations are not accepted and that the Bureau shall revise or amend the contract as requested by the contractor and the tribal governing body(s).

(2) When the Area Director or Commissioner accepts the contracting officer's recommendations and believes the Bureau should not revise or amend the contract as requested, notice shall be given that the Area Director or Commissioner plans to issue a declination notice and that the contractor and the tribal governing body(s) have the right to appeal under § 271.81.

[40 FR 51286, Nov. 4, 1975, as amended at 45 FR 13450, Feb. 29, 1980]

§ 271.65 [Reserved]

§ 271.66 Revisions or amendments proposed by Bureau.

(a) Where the Bureau proposes a revision or amendment to a specific contract, it shall notify the contractor and the tribal governing body(s) in writing of the following:

(1) The specific revision or amendment which is proposed.

(2) The rationale for the proposal.

(b) Except as provided in paragraph (c) of this section, all amendments proposed by the Bureau must be agreed to, in writing, by the contractor, the tribal governing body(s) and the Bureau. If such agreement cannot be obtained, the proposed amendment shall not be adopted by the Bureau.

(c) When the Bureau finds through fiscal analysis that a redistribution of excess social services grant funds should be made in order to meet financial assistance needs in other Bureau jurisdictions, or in other social services grant program components within the same Bureau jurisdiction, the bureau has the right to revise the amount of social services grant funds designated in a contract without obtaining agreement by the contractor and tribal governing body(s). However, the Bureau must notify the contractor and tribal governing body(s) in writing as required by paragraph (a) of this section.

[40 FR 51286, Nov. 4, 1975, as amended at 43 FR 37445, Aug. 23, 1978]

Subpart F—Retrocession and Reassumption

§ 271.71 Retrocession.

(a) Tribal governing bodies not only have a right to contract for Bureau programs or portions thereof, as they choose, but also have a right to return responsibility for the operation of a contracted program or portion thereof to the Bureau for any reason they deem appropriate. Retrocession specifically recognizes the Federal Government's unique and continuing relationship with and responsibility to Indian people.

(b) When a tribal organization experiences specific problems with the operation of a contract and is considering the possibility of retrocession, it may request the Bureau to assist it to avoid retrocession. In the event of such a request, the Bureau will:

(1) Meet with appropriate officials of the tribal organization and the tribe, where the tribal governing body is not the contractor, to develop a plan to avoid retrocession.

(2) Provide, to the extent possible, special technical assistance to assist the tribal organization to satisfactorily operate the program and enable it to avoid retrocession.

§ 271.72 Full retrocession procedures.

(a) Whenever an Indian tribe requests retrocession of a contract, retrocession shall be effective upon a date specified by the Commissioner or Area Director as appropriate but no later than 120 days after the date of the request from the tribe(s), except when the tribe(s) and the Commissioner mutually agree on a later date.

(b) When the contract is with a tribal organization other than the tribal governing body and the tribal resolution required under § 271.18(c)(2) does not vest in the tribal governing body the sole right to request retrocession, the tribal governing body shall consult with the tribal organization and, if so requested, offer it an opportunity to be heard in accordance with tribal procedures before requesting retrocession of the contract.

(c) When the contract is with a tribal organization which is performing services benefiting more than one Indian tribe, all or any of the tribes may request a retrocession in accordance with the procedures provided for in the tribal resolution required for the initial contract § 271.18(c)(2). When all of the tribes request retrocession, the retrocession shall be accomplished as provided for in this section. When one or more, but not all of the tribes request retrocession, the contract will continue until the end of the contract term or the fiscal year, whichever comes first. In such case the Bureau shall assess its available resources and capabilities to provide such services independently of and in addition to that being provided under the contract and inform the tribes requesting retrocession of the level of services that will be available to them upon retrocession. The fact that these services may necessarily be at a reduced level will not constitute cause to cancel the existing contract providing services to tribes not retroceding. The existing contract will be modified as appropriate to reflect the nonparticipation to the tribes no longer being served. The Bureau will, however, provide sufficient resources to maintain the existing level of services under the contract to the tribes that did not request retrocession.

(d) Within 15 days after receipt by the Commissioner or Area Director of a request for retrocession, representatives of the tribe(s), the tribal organization when appropriate, and the Commissioner or Area Director as appropriate shall meet and take the following actions:

(1) Mutually agree on a plan for orderly transfer of responsibilities.

(2) Mutually agree on a plan for inventorying and accounting for materials and supplies on hand, equipment, facilities and real property.

(3) Establish an accounting of funds, current and anticipated obligations, and costs of operation until the retrocession date.

(4) Identify all records relating to the contract and to the contracted function.

(e) On the date of retrocession, the tribal contractor will deliver to the Bureau all property that was acquired with contract funds and all materials, supplies and records of whatever nature which have been identified as necessary for the continuation of the program, project or function.

(f) Within 60 days after retrocession, the tribe(s) and the Bureau will jointly develop a report to the Commissioner outlining the reasons why retrocession was requested.

(g) Retrocession of a contract by an Indian tribe shall be without prejudice to:

(1) Any other contract to which it is a party.

(2) Any other contract it may request.

(3) Any future request to contract for the programs or services covered by the retroceded contract, insofar as the conditions which led to retrocession are no longer a factor and the tribal organization is the same one that held the retroceded contract.

§ 271.73 Tribal assumption of retroceded contracts.

Wherever an Indian tribe chooses to retrocede a contract operated by a tribal organization other than the tribal governing body, the tribal governing body pursuant to § 271.18 may contract for the program. In such a case, the tribal governing body shall submit a contract application pursuant to § 271.14; *Provided*, That the tribal governing body may submit the contract application directly to the Area Director or Commissioner, as appropriate.

§ 271.74 Reassumption.

(a) A contract made under this Part may be terminated, and control or operation of the program or function as-

sumed by the Commissioner or Area Director as appropriate, in whole or in part, when the Commissioner or Area Director determines that the tribal organization's performance under the contract involves:

(1) The violation of the rights of any persons can be identified as a pattern or practice, or

(2) The endangerment of the health, safety and welfare of any persons, or

(3) Gross negligence or mismanagement in the handling or misuse of funds provided under the contract.

(b) If the Commissioner or Area Director as appropriate finds there is an immediate threat to safety, he may, upon written notice to the tribal organization, immediately suspend the contract and resume control or operation of the program. In such an event, the Commissioner or Area Director will hold a hearing within 10 days. The hearing shall be conducted as provided in § 271.81(c). The decision issued pursuant to § 271.81(d) shall include a statement of the corrective action needed to be taken by the tribal organization before it can assume operation of the contract.

(c) If there is no immediate threat to safety, the Commissioner or Area Director as appropriate shall provide written notice to the tribal organization of intent to terminate the contract. The notice shall give the reasons for the proposed termination, the corrective measures necessary, and a reasonable time period in which corrective action must be taken. The Commissioner or Area Director shall also hold a hearing in accordance with § 271.81 within 10 days of issuance of the notice.

(d) A decision to terminate the contract and reassume control or operation may be appealed as provided in § 271.81.

(e) The Commissioner may decline to enter into a new contract and may retain control of the program or function until he is satisfied that the conditions which caused the contract to be terminated have been corrected.

[40 FR 51286, Nov. 4, 1975, as amended at 45 FR 13450, Feb. 29, 1980]

§ 271.75 Cancellation of contract for cause.

(a) Any contract with a tribal organization entered into under this Part may be cancelled for cause when the tribal organization fails to perform within the terms and conditions of the contract.

(b) Before cancellation of the contract, the Area Director or Commissioner shall advise the tribal organization and the tribal governing body(s) if different than the tribal organization in writing of the following:

(1) The reasons why the Area Director or Commissioner is considering cancelling the contract.

(2) That the tribal organization will be given at least 45 days to present an acceptable plan to overcome the deficiencies in its contract performance.

(3) That the Bureau will furnish technical advice and assistance to help overcome the deficiencies in the contract performance, when requested.

(c) When the contract is with other than the governing body of the Indian tribe, the tribe(s) receiving services or benefits under the contract will be notified when a cancellation for cause is contemplated. The notice shall include the reasons why a cancellation for cause is contemplated and any supporting documents used by the Area Director to reach his conclusions. The notice shall also offer to held a meeting with the tribe(s) to discuss the issues and explore any options available to the tribe(s). The Area Director and the tribe(s) will mutually consider the relevant issues before the Area Director proceeds with any cancellation action.

(d) If the tribal organization does not present an acceptable plan to overcome the deficiencies in its contract performance within 45 days of its receipt of the notice of deficiencies or does not request the Commissioner to review the Area Director's decision as provided in paragraphs (e) and (f) of this section, the Area Director will cancel the contract for cause. The contracting officer will notify the tribal organization, in writing, of the cancellation. The notice shall give the reasons for the cancellation and the right of the tribal organization to appeal under §§ 271.81 and 271.82.

(e) When the Area Director determines the contract should be cancelled for cause the decision shall state as a minimum: The reasons for the decision; the actions that must be taken to achieve satisfactory performance; the technical assistance the Bureau will provide; notice that the tribal organization will be given at least 60 days to correct its performance deficiencies; and the tribal organization's right of appeal under §§ 271.81 and 271.82. The decision shall also advise the tribal organization that it may request the Commissioner to review the decision and that such request must be made within 30 days of receipt of the decision.

(f) The Commissioner's review will be conducted and the tribal organization advised of the results within 30 days of receiving the request. If the Commissioner concurs in the Area Director's decision, the tribal organization will be so advised in writing and of its right to appeal the Area Director's decision pursuant to §§ 271.81 and 271.82. If the Commissioner decides that the Area Director's decision is not supported by the record, he will so advise both the Area Director and the tribal organization and the cancellation action will cease. In no case shall an Area Director cancel a contract until the review requested by a tribal organization has been completed by the Commissioner and results thereof have been received.

(g) When a contract is cancelled for cause, the Bureau will either perform the work with its own forces or by another contract, as appropriate. When the Bureau does not have sufficient forces on hand to immediately perform the work, it may, for temporary periods of the shortest duration possible, contract with a contractor that is not a tribal organization. However, in such cases, the advice of the tribe(s) will be obtained to determine how they desire the services to be rendered.

(h) Excess costs resulting from a cancellation that are required to operate the program will be provided by the Bureau to the extent that funds are available for that fiscal year. However, if current funds are not sufficient to maintain the program at its planned level, the program may be reduced until funds become available for the remainder of the fiscal year, at which time the program will be resumed at its planned level.

(i) Any tribal organization that has a contract cancelled for cause must demonstrate that the causes which led to the cancellation have been cured before it will be considered for another contract. In addition, there must be a new resolution and a new request from the Indian tribe(s) that will receive services or benefits under the contract.

[40 FR 51286, Nov. 4, 1975, as amended at 41 FR 5098, Feb. 4, 1976; 45 FR 13451, Feb. 29, 1980]

§ 271.76 Bureau operation of retroceded, reassumed or cancelled for cause contracts.

(a) The Bureau shall provide to the tribe(s) and Indians served by a contract which is retroceded, reassumed or cancelled for cause not less than the same quantity and quality of service that would have been provided at the level intended by the contract or operated previously by the Bureau.

(b) The Bureau shall provide to the tribe(s) and Indians served by a contract which is retroceded, reassumed, or cancelled for cause not less than the same quantity and quality of permanent and temporary personnel that meet the U.S. Civil Service qualifications that would have been provided at the level intended by the contract or previously operated by the Bureau. The procedures in § 271.77 will be followed to obtain personnel to operate programs or parts of programs previously under contract with a tribal organization but returned for operation by the Bureau because the contract was either retroceded, reassumed or cancelled for cause.

(c) This section does not apply to contracts for the operation of Bureau programs or parts of programs previously entered into under the authority of the Buy Indian Act (25 U.S.C. 47) and in effect on the effective date of the regulations, since ceiling and positions were not reserved at the time those contracts were awarded. However, the Bureau will provide, as nearly as possible, the same quantity and quality of service and permanent and

temporary personnel that meet the U.S. Civil Service qualifications that would have been provided at the level intended by the Buy Indian Act contract or as operated previously by the Bureau.

(d) Actions under this section shall not cause a reduction in the quality and quantity of services to tribe(s) or Indians not served by contracts which are retroceded, reassumed or cancelled for cause.

[40 FR 51286, Nov. 4, 1975, as amended at 43 FR 37445, Aug. 23, 1978]

§ 271.77 Authorized position and end-of-year employment ceiling reserve for Bureau operation of retroceded, reassumed or cancelled contracts.

(a) When authorized permanent and other positions and permanent and other end-of-year employment ceiling are not required for the operation of all or parts of a Bureau program because the program or parts of a program are under contract with a tribal organization under this Part, the positions and ceilings shall be reserved. The positions and ceiling reserved shall be available only for the same program or parts of a program at the same locations if the Bureau must operate the program or parts of a program because a tribe has retroceded the contract or because the Bureau has reassumed or cancelled the contract for cause.

(b) The Bureau shall establish a position and ceiling reserve for all contracts for the operation of all or parts of Bureau programs initially entered into on or after the effective date of these regulations.

Subpart G—Hearings and Appeals

§ 271.81 Informal conference and formal hearing.

(a) A tribal organization (unless restricted by the tribal resolution under § 271.18(c)(2) or subsequent resolutions) or tribal governing body will be notified in writing of the Area Director's recommendation or decision. The Area Director's recommendation or decision may be appealed to the Commissioner and the notice shall include a written statement to that effect. The applicant shall have 30 days from receipt of notice of the Area Director's decision in which to exercise its appeal rights by providing the Area Director with a notice in writing to that effect.

(b) Upon receipt of notice of appeal and if an informal conference has been requested, a date, time, and place for the informal conference will be arranged.

The informal conference will be conducted within 30 calendar days of receipt of the appeal notice, or at such time as may be agreed upon. The Bureau of Indian Affairs will authorize payment of transportation costs and per diem to allow adequate representation of the applicant if the meeting is more than 50 miles from the office of the applicant. The conference shall be conducted by the Commissioner or by an official designated by him. The purpose of the informal conference is to attempt to informally resolve issues without a formal hearing. Interested parties, entitled to present their positions shall be limited to authorized representatives of the Bureau, the tribal organization and the tribal governing body(s). If the applicant is not satisfied with the informal conference, or does not request a conference, the applicant is entitled to a formal hearing in accordance with § 271.81(c).

(c) The formal hearing, if requested in writing, will be convened within 30 days of the Commissioner's receipt of the request, or at such date and place as agreed upon. If the hearing is more than 50 miles from the applicant's office, the Bureau of Indian Affairs will authorize payment of transportation costs and per diem to allow adequate representation. The Bureau shall be responsible to arrange all aspects of the formal hearing. The hearing will be conducted by an official from the Office of Hearings and Appeals, the Department of the Interior, and shall accord the tribal governing body or applicant the following rights:

(1) The right to written notice of issues to be considered;

(2) The right to be represented by counsel;

(3) The right to have the Department provide witnesses who are capa-

ble of providing testimony on the issues;

(4) The right to cross examine witnesses;

(5) The right to produce oral and documentary evidence;

(6) The right to require testimony under oath; and

(7) The right to a copy of the transcript of the hearings and all documentary evidence introduced.

(d) The written decision of the Commissioner shall be rendered within 30 working days after receipt of the transcript. The decision of the Commissioner may be appealed to the Assistant Secretary—Indian Affairs as provided under § 271.82.

[45 FR 13451, Feb. 29, 1980]

§ 271.82 Appeals from decision or action by Commissioner.

(a) The applicant or the tribal governing body (unless restricted by the tribal resolution under § 271.18(c)(2) or subsequent resolutions) may appeal the Commissioner's decision made under § 271.81 to the Assistant Secretary—Indian Affairs. A notice of appeal must be sent to the Assistant Secretary—Indian Affairs within 30 days of receipt of the Commissioner's decision. The written decision of the Assistant Secretary—Indian Affairs shall be rendered within 30 working days following the receipt of appeal.

(b) The decision by the Assistant Secretary—Indian Affairs is final for the Department. The tribal governing body or the applicant is deemed to have exhausted its administrative remedies following rendering of the decision.

[45 FR 13451, Feb. 29, 1980]

§§ 271.83-271.84 [Reserved]

PART 272—GRANTS UNDER INDIAN SELF-DETERMINATION ACT

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AUTHORITY: Section 104, Pub. L. 93-638, 88 Stat. 2207 (25 U.S.C. 450h).

SOURCE: 40 FR 51300, Nov. 4, 1975, unless otherwise noted.

Subpart A—General Provisions

§ 272.1 Purpose and scope.

The purpose of the regulations in this Part is to provide the application and approval procedures for the award

by the Bureau of grants under section 104(a) of Title I of the Indian Self-Determination and Education Assistance Act (Public Law 93-638, 88 Stat. 2203). Title I is known as the Indian Self-Determination Act.

§ 272.2 Definitions.

As used in this Part:

(a) "Act" means the Indian Self-Determination and Education Assistance Act (Public Law 93-638, 88 Stat. 2203).

(b) "Applicant" means a tribal governing body applying for a grant under this Part.

(c) "Area Director" means the official in charge of a Bureau of Indian Affairs Area Office.

(d) "Bureau" means the Bureau of Indian Affairs.

(e) "Commissioner" means the Commissioner of Indian Affairs, under the direction and supervision of the Assistant Secretary—Indian Affairs, who is responsible for the direction of day-to-day operations of the Bureau of Indian Affairs.

(f) "Days" means calendar days.

(g) "Economic enterprise" means any commercial, industrial, agricultural, or business activity that is at least 51 percent Indian owned, established, or organized for the purpose of profit.

(h) "Grant" means a written agreement between the Bureau and a tribal governing body where the Bureau provides funds to carry out specified programs, services, or activities and where the administrative and programmatic provisions are specified.

(i) "Grantee" means the tribal governing body which is responsible for administration of the grant.

(j) "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony, or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(k) "Indian" means a person who is a member of an Indian tribe.

(l) "Resolution" means the formal manner in which the tribal government expresses its legislative will pursuant to its organic documents. In the absence of such organic documents a written expression adopted pursuant to tribal (current) practices will be acceptable.

(m) "Secretary" means the Secretary of the Interior.

(n) "Superintendent" means the official in charge of a Bureau of Indian Affairs Agency Office.

(o) "Subcontracts" means contracts undertaking some of the obligations of primary grants.

(p) "Subgrants" means secondary grants undertaking some of the obligations of primary grants.

(q) "Tribal government," "tribal governing body," and "tribal council" means the recognized governing body of an Indian tribe.

(r) "Trust resources" means natural resources, land, water, minerals, funds or property, asset, or claim, including any intangible right or interest in any of the foregoing, which is held by the United States in trust for any Indian tribe or Indian individual subject to a restriction on alienation imposed by the United States.

(s) "Trust responsibility" means for the purposes of this Part only the responsibility assumed by the United States Government, by virtue of treaties, statutes and other means, legally associated with the role of trustee, to protect, manage, develop, and approve authorized transfers of interest in trust resources held by Indian tribes and Indian individuals to a standard of the highest degree of fiduciary responsibility.

(t) "Assistant Secretary—Indian Affairs" means the Assistant Secretary—Indian Affairs who discharges the authority and responsibility of the Secretary for the activities pertaining to Indians and Indian affairs.

[40 FR 51300, Nov. 4, 1975, as amended at 43 FR 37445, Aug. 23, 1978; 45 FR 13451, Feb. 29, 1980]

§ 272.3 Effect on existing Indian rights.

The regulations in this Part are not meant to and do not:

(a) Affect, modify, diminish, or otherwise impair the sovereign immunity

from suit enjoyed by an Indian tribe; or

(b) Authorize, require or permit the termination of any existing trust responsibility of the United States with respect to the Indian people.

§ 272.4 Revision or amendment of regulations.

Before making any substantive revisions or amendments to the regulations in this Part, the Secretary shall take the following actions:

(a) Consult with Indian tribes and national and regional Indian organizations to the extent practicable about the need for revision or amendment and consider their views in preparing the proposed revision or amendment.

(b) Present the proposed revision or amendment to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

(c) Publish any proposed revisions or amendments in the FEDERAL REGISTER as proposed rulemaking to provide adequate notice to, and receive comments from all interested parties.

(d) After consideration of all comments received, publish the regulations in the FEDERAL REGISTER in final form not less than 30 days before the date they are made effective.

(e) Annually consult with Indian tribes and national and regional Indian organizations about the need for revision or amendment, and consider their views in preparing the revision or amendment.

(f) Nothing in this section shall preclude Indian tribes or national or regional organizations from initiating requests for revisions or amendments, subject to paragraphs (a), (b), (c) and (d) of this section.

§ 272.5 Statement of Policy.

(a) The Indian Self-Determination and Education Assistance Act (Public Law 93-638) is intended to facilitate increased self-determination for American Indians by providing a means through which they may plan, conduct, and administer programs and services to Indian people. These programs and services are essentially those authorized by the Act of April 16, 1934 (Johnson-O'Maley Act); the Act of November 2, 1921 (Snyder Act) and other subsequent Acts.

(b) A most important aid available to assist Indians in achieving this objective of increased self-determination is the grant authority provided in section 104 of the Act. This grant authority will assist Indian tribes in improving their governing capabilities, increase their ability to effectively administer programs under contract, and enable them to provide direction to the Federal programs intended to serve Indian people.

(c) Under this grant authority the Bureau of Indian Affairs will administer a program of Indian self-determination grants which shall be subject to Parts 272 and 276 of this chapter. In the administration of this grant program, it shall be the Bureau's policy that approval of applications for these grants shall include a determination that there is a direct and reasonable relationship between the applicant's proposal and the provisions of section 104a of the Act and of § 272.12.

(d) In accordance with this policy, it shall be the responsibility of the applicant to establish that such a grant will improve the tribe's governing capabilities, enhance the tribe's ability to administer Federal programs under contract, or enable the tribe to provide direction to Bureau programs and to other Federal programs serving it.

(e) Emphasis on planning and training in relation to the purposes of a grant given in paragraph (d) of this section is considered in keeping with the intent of section 104(a) of the Act. Applications which include these elements are encouraged.

Subpart B—Application Process

§ 272.11 Eligibility requirements.

The governing body of any Indian tribe or tribes may apply for a grant under this Part.

§ 272.12 Purposes of grants.

Grants are for the purpose of: (a) Strengthening and improving administration of tribal government. Examples in this specific regard are as follows:

(1) Developing the capability of the executive, legislative, and judicial

branches of tribal government in such areas as administration of planning, financial management, or merit personnel systems.

(2) Improvement of tribally funded programs or activities.

(3) Development, construction, improvement, maintenance, preservation, or operation of tribal facilities or resources.

(4) Training of tribal officials and employees in areas relating to the planning, conduct and administration of tribal programs.

(5) Design and implementation of new tribal government operations.

(6) Development of policy-making, legislative and judicial skills.

(b) Planning, training, evaluation or other activities designed to improve the capacity of an Indian tribe to enter into a contract or contracts pursuant to section 102 of the Act and the additional costs associated with the initial years of operation under such a contract or contracts. Examples of use of grants by Indian tribes, as indicated in this paragraph, are as follows:

(1) Evaluation of programs and services currently being provided directly by the Bureau in order to determine:

(i) Whether it is appropriate for the Indian tribe to enter into a contract pursuant to section 102 of the Act for a program or a portion of a program.

(ii) Whether the Indian tribe can improve the quality or quantity of the service now available.

(iii) Whether certain components should be redesigned but the program should continue to be operated by the Bureau.

(iv) Whether the program as currently administered by the Bureau is adequate to meet tribal needs and, therefore, the Indian tribal organization does not wish to contract or modify the program.

(2) Planning or redesigning a Bureau program before the Indian tribe contracts for it, and development of an operational plan for carrying out the anticipated contract in order to facilitate the transition of the program from Bureau to tribal operation.

(3) Training of tribal officials and employees in areas related to the conduct and administration of programs of the Bureau which the Indian tribe may wish to operate under contract.

(4) Costs associated with contracting to enable tribal contracting. Examples of such costs include curriculum development in support of tribal contracting of schools, in-service training programs to develop the skills of employees of the Indian tribe on a continuing basis, special on-the-job training activities in support of tribal members being prepared to assume program responsibilities.

(c) Acquisition of land in connection with paragraphs (a) and (b) of this section. Procedures for acquisition of land are prescribed in § 276.11 of this chapter.

(d) Planning, designing, monitoring, and evaluating Federal programs serving the Indian tribe. An example of this regard is assisting the tribal government to influence Federal programs presently offered or those that could be offered to the tribe to assure that they are responsive to the needs of Indian tribes. A tribal government may monitor and evaluate the operations of such programs which now serve tribal members and replan and redesign those programs to better respond to their needs. Bureau programs which are planned, replanned, designed or redesigned in accordance with this paragraph shall be implemented by the Bureau as prescribed in § 272.27.

(e) Funds made available for grants for the purposes described above may be applied as matching shares for other Federal or non-Federal grant programs as prescribed in § 272.33.

§ 272.13 Obtaining application instructions and materials.

Application instructions and related application materials may be obtained from Superintendents, Area Directors, and the Commissioner.

§ 272.14 Content of application.

Application for a grant under this Part shall include:

(a) Name and address of Indian tribal governing body(s) applying for a grant.

(b) Descriptive name of project.

(c) Federal funding needed.

(d) Population directly benefiting from the project.

(e) Length of project.

(f) Beginning date.

(g) Project budget categories or items.

(h) Program narrative statement.

(i) Certification or evidence of request by Indian tribe.

(j) Name and address of Bureau office to which application is submitted.

(k) Date application is submitted to Bureau.

(l) Additional information pertaining to grant applications for funds to be used as matching shares will be requested as prescribed in § 272.33.

§ 272.15 Assistance in developing and completing grant applications.

(a) Technical assistance and support necessary to develop and complete grant applications under this Part shall be provided by the Superintendents, Area Directors and their designated representatives upon request of the applicant.

(b) Applicants may apply for initial planning grants to cover the costs of developing and completing larger grant applications. Such initial planning grants will be made from funds which may be budgeted for grants under this part for tribal governing bodies. Applications for these initial planning grants shall be made as follows:

(1) An application for an initial planning grant may be accomplished by submission of a tribal request as prescribed in § 272.16, together with an accompanying letter from the tribal governing body requesting an initial planning grant in a specific amount. This letter shall include a brief description of the proposed initial planning project, its purpose or objective as related to development or completion of a larger grant application, and the initial planning project budget categories or items.

(2) This initial planning grant shall be no more than 10% of total grant funds which may be budgeted for grants under this part for the tribal governing body, up to a maximum of $20,000.

(3) An application for an initial planning grant shall be submitted directly to the appropriate officer having grant approval authority as prescribed in § 272.17(a) or (b) and shall be acted upon by that office within 30 days.

§ 272.16 Request from tribal governing body.

The Bureau shall not make a grant under this Part unless specifically and officially requested to do so by a tribal governing body. This request may be in the form of a tribal resolution, an endorsement included in the grant application or such other forms as the tribal constitution or current practice requires.

§ 272.17 Grant approval limitations.

(a) Area Office approval. Authority for approval of a grant application under this Part shall be with the Area Director when the intent, purpose and scope of the grant proposal pertains solely to an Indian tribe or tribes located within that Area Director's administrative jurisdiction.

(b) Central Office approval. Authority for approval of a grant application under this Part shall be with the Commissioner when the intent, purpose and scope of the grant proposal pertains to Indian tribes representing different Area Office administrative jurisdictions but located within the Commissioner's overall administrative jurisdiction.

(c) Grant approvals under this section shall be subject to availability of funds. These funds will include those which are:

(1) Directly appropriated for implementation of this Act.

(2) Appropriated under other Acts for Bureau programs which are related to the purposes prescribed in § 272.12. However, this does not include funds appropriated for Indian Business Development Fund grants which are administered under Part 80 of this chapter.

§ 272.18 Submitting application to Agency Office.

An application for a grant under this Part shall be initially submitted to the appropriate Superintendent for review and recommendation as prescribed in

§ 272.19. This does not include applications for initial planning grants to develop and complete larger grant applications. Such initial planning grant applications are submitted and acted upon as prescribed in § 272.15(b).

§ 272.19 Agency Office review and recommendation.

(a) Recommendation for approval or disapproval of a grant under this Part shall be made by the Superintendent when the intent, purpose and scope of the grant proposal pertains to or involves an Indian tribe or tribes located within that Superintendent's administrative jurisdiction.

(b) Upon receipt of an application for a grant under this Part, the Superintendent shall:

(1) Acknowledge in writing receipt of the application within 10 days of its arrival at the Agency Office.

(2) Review the application for completeness of information and promptly request any additional information which may be required to make a recommendation.

(3) Assess the completed application for appropriateness of purpose as prescribed in § 272.12, and for overall feasibility.

(4) Inform the applicant, in writing and before any final recommendation, of any special problems or impediments which may result in a recommendation for disapproval; offer any available technical assistance required to overcome such problems or impediments; and solicit the applicant's written response.

(5) Recommend approval or disapproval following full assessment of the completed application and forward the application and recommendation to the Area Director for further action.

(6) Promptly notify the applicant in writing as to the final recommendation. If the recommendation is for disapproval, the Superintendent will include in the written notice to the applicant the specific reasons therefor.

(7) In instances where a joint application is made by tribes representing more than one Agency Office administrative jurisdiction, copies of the application shall be provided by the applicants to each involved Superintendent for review and recommendation as prescribed in this section.

§ 272.20 Deadline for Agency Office action.

Within 30 days of receipt of an application for a grant under this Part, the Superintendent shall take action as prescribed in § 272.19. Extension of this deadline will require consultation with and written consent of the applicant.

§ 272.21 Area Office review and action.

(a) Upon receipt of an application for a grant requiring Area Office approval, the Area Director shall:

(1) Review the application following the applicable review procedure prescribed in § 272.19.

(2) Review the Superintendent's recommendation as pertains to the application.

(3) Approve or disapprove the application.

(b) In instances where a joint application is made by tribes representing more than one Area Office administrative jurisdiction, the Area Director shall add his recommendation for approval or disapproval to that of the Superintendent and shall forward the application and recommendations to the Commissioner for further action.

(c) Upon taking action as prescribed in paragraph (a) or (b) of this section, the Area Director shall promptly notify the applicant in writing as to the action taken. If the action taken is disapproval or recommendation for disapproval of the application, the Area Director will include in the written notice the specific reasons therefor.

§ 272.22 Deadline for Area Office action.

Within 30 days of receipt of an application for a grant under this Part, the Area Director shall take action as prescribed in § 272.21. Extension of this deadline will require consultation with and written consent of the applicant.

§ 272.23 Central Office review and decision.

Upon receipt of an application for a grant requiring Central Office approval, the Commissioner shall:

(a) Review the application following the applicable review procedures prescribed in § 272.19.

(b) Review Agency and Area Office recommendations as pertain to the application.

(c) Approve or disapprove the application.

(d) Promptly notify the applicant in writing as to the approval or disapproval of the application. If the application is disapproved, the Commissioner will include in the written notice the specific reasons therefor.

§ 272.24 Deadline for Central Office action.

Within 30 days of receipt of an application for a grant under this Part the Commissioner shall take action as prescribed in § 272.23. Extension of this deadline will require consultation with and written consent of the applicant.

§ 272.25 Grant execution and administration.

(a) Grants approved pursuant to § 272.17(a) shall be executed and administered at the Area Office level.

(b) Grants approved pursuant to § 272.17(b) shall be executed and administered at the Central Office level provided that the Commissioner may designate an Area Office to execute or administer such a grant.

§ 272.26 Subgrants and subcontracts.

The grantee may make subgrants or subcontracts under this part provided that such subgrants or subcontracts are for the purpose for which the grant was made and that the grantee retains administrative and financial responsibility over the activity and the funds.

§ 272.27 Acceptance of tribal plans for the operation of Bureau programs.

Any Bureau program, excluding any trust resources program, which is planned, replanned, designed or redesigned by a tribe under a grant provided under this part, or from any other resource, shall be implemented by the Bureau if requested by the tribe through resolution. However, before implementation the program shall meet the following requirments:

(a) Funding, staffing and other resources are available to implement the plan.

(b) The implementation of the plan would not cause a reduction in the quality or quantity of services to Indians.

(c) The plan meets the administrative planning requirements of the Bureau. However, the plan need not meet the planning requirements for the particular program.

(d) The plan provides a basis for the delivery of satisfactory services to Indian people, unless it can be demonstrated by the Bureau by substantial evidence that the plan will yield results which will be deleterious to the welfare of the Indian people to be served.

(e) The Commissioner may waive any regulatory requirements given elsewhere in this chapter or any other requirements not inconsistent with law. Inconsistencies between tribal plans and Bureau manual, guidelines, or other non-regulatory procedures are not constraints on the tribal plans.

Subpart C—General Grant Requirements

§ 272.31 Applicability.

The general requirements for grant administration in this Subpart are applicable to all Bureau grants provided to tribal governing bodies under this Part, except to the extent inconsistent with an applicable Federal statute or regulation.

§ 272.32 Reports and availability of information to Indians.

Any tribal governing body receiving a grant under this Part shall make information and reports concerning that grant available to the Indian people which it serves or represents. Access to these data shall be requested in writing and shall be made available by the tribe within 10 days of receipt of that request, subject to any exceptions provided for in the Freedom of Information Act (5 U.S.C. 552), as amended by the Act of November 21, 1974 (P.L. 93-502; 88 Stat. 1561).

§ 272.33 Matching share.

(a) Specific Federal laws notwithstanding, grant funds provided to tribal governing bodies under this Part may be used as matching shares for any other Federal or non-Federal grant programs which contribute to the purposes specified in § 272.12.

(b) Superintendents, Area Directors, and their designated representatives will, upon tribal request, assist tribes in obtaining information concerning other Federal grantor agencies with matching fund programs and will, upon tribal request, provide technical assistance to tribes in developing applications for submission to those Federal grantor agencies.

§ 272.34 Performing personal services.

Any grant provided under this Part may include provisions for the performance of personal services which would otherwise be performed by Federal employees.

§ 272.35 Fair and uniform services.

Any grant provided under this Part shall include provisions to assure the fair and uniform provision by the grantee of services and assistance to all Indians included within or affected by the intent, purpose and scope of that grant.

§ 272.36 Penalties.

If any officer, director, agent, or employee of, or connected with, any recipient of a grant, subgrant, contract or subcontract under this Part, embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds, assets, or property which are the subject of such a grant, subgrant, contract, or subcontract, he shall be subject to the following penalties:

(a) If the amount involved does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) If the amount involved exceeds $100, he shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

Subpart D—Grant Revision, Cancellation, or Assumption

§ 272.41 Revisions or amendments of grants.

(a) Requests for budget revisions or amendments to grants awarded under this Part shall be made as provided in § 276.14 of this chapter.

(b) Requests for revisions or amendments to grants provided under this Part, other than budget revisions referred to in paragraph (a) of this section, shall be made to the Bureau officer responsible for approving the grant in its original form. Upon receipt of a request for revisions or amendments to grants, the responsible Bureau officer shall follow precisely the same review procedures and time specified in § 272.19.

§ 272.42 Assumption.

(a) When the Bureau cancels a grant for cause as specified in § 276.15 of this chapter, the Bureau may assume control or operation of the grant program, activity or service. However, the Bureau shall not assume a grant program, activity or service that it did not administer before tribal grantee control unless the tribal grantee and the Bureau agree to the assumption.

(b) When the Bureau assumes control or operation of a grant program cancelled for cause, the Bureau may decline to enter into a new grant agreement until satisfied that the cause for cancellation has been corrected.

Subpart E—Hearings and Appeals

§ 272.51 Hearings.

Hearings referred to in § 276.15(c)(3) of this chapter shall be conducted as follows:

(a) The grantee and the Indian tribe(s) affected shall be notified, in writing, at least 10 days before the hearing. The notice should give the date, time, place, and purpose of the hearing.

(b) A written record of the hearing shall be made. The record shall include written statements submitted at the hearing or within 5 days following the hearing.

(c) The hearing will be conducted on as informal a basis as possible.

[40 FR 51300, Nov. 4, 1975, as amended at 45 FR 13451, Feb. 29, 1980]

§ 272.52 Appeals from decision or action by Superintendent.

(a) A grantee may appeal any decision made or action taken by a Superintendent under this Part. Such appeal shall be made to the Area Director as provided in Part 2 of this chapter.

(b) The appellant shall provide its own attorney or other advocates to represent it during the appeal process.

§ 272.53 Appeals from decision or action by Area Director.

(a) A grantee may appeal any decision made or action taken by an Area Director under this Part. Such appeal shall be made to the Commissioner as provided in Part 2 of this chapter.

(b) The appellant shall provide its own attorney or other advocates to represent it during the appeal process.

§ 272.54 Appeals from decision or action by Commissioner.

(a) A grantee may appeal any decision made or action taken by the Commissioner under this Part only as provided in Part 2 of this chapter.

(b) The appellant shall provide its own attorney or other advocates to represent it during the appeal process.

§ 272.55 Failure of Agency or Area Office to act.

Whenever a Superintendent or Area Director fails to take action on a grant application within the time limits established in this Part, the applicant may at its option, request action by the next higher Bureau official who has grant approval authority as prescribed in this Part. In such instances, the Superintendent or Area Director who failed to act shall immediately forward the application and all related materials to that next higher Bureau official.

PART 273—EDUCATION CONTRACTS UNDER JOHNSON-O'MALLEY ACT

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AUTHORITY: Sections 201-203, Pub. L. 93-638, 88 Stat. 2203, 2213-2214 (25 U.S.C. 455-457), unless otherwise noted.

SOURCE: 40 FR 51303, Nov. 4, 1975, unless otherwise noted.

Subpart A—General Provisions

§ 273.1 Purpose and scope.

(a) The purpose of the regulations in this Part is to set forth the application and approval process for education contracts under the Johnson-O'Malley Act. Such contracts shall be for the purpose of financially assisting those efforts designed to meet the specialized and unique educational needs of eligible Indian students, including programs supplemental to the regular school program and school operational support, where such support is necessary to maintain established State educational standards.

(b) The application and approval process in this part applies specifically to contracts with a State, school district, or Indian corporation.

(c) Contracts with tribal organizations for supplemental and operational support will be entered into only upon the request of an Indian tribe(s), and shall be subject to the provisions of Part 271 of this chapter and 41 CFR Part 14H-70, except as provided in § 273.11.

(d) Nothing in these regulations shall be construed as:

(1) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe;

(2) Authorizing or requiring the terminiation of any existing trust responsibility of the United States with respect to the Indian people; or,

(3) Permitting significant reduction in services to Indian people as a result of this Part.

(e) Nothing in these regulations shall be construed to mandate an Indian tribe to request a contract or contracts. Such requests are strictly voluntary.

§ 273.2 Definitions.

As used in this Part:

(a) "Area Director" means the official in charge of a Bureau of Indian Affairs Area Office.

(b) "Bureau" means the Bureau of Indian Affairs.

(c) "Commissioner," means the Commissioner of Indian Affairs, under the direction and supervision of the Assistant Secretary—Indian Affairs, who is responsible for the direction of day-to-day operations of the Bureau of Indian Affairs.

(d) "Days" means calendar days.

(e) "Economic enterprise" means any commercial, industrial, agricultural, or business activity that is at least 51 percent Indian owned, established or organized for the purpose of profit.

(f) "Education plan" means a comprehensive plan for the programmatic and fiscal services of and accountability by a contractor for the education of eligible Indian students under this Part.

(g) "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(h) "Indian corporation" means a legally established organization of Indians chartered under State or Federal law and which is not included within the definition of "tribal organization" given in paragraph (v) of this section.

(i) "Indian Education Committee" means one of the entities specified by § 273.15.

(j) "Indian" means a person who is a member of an Indian tribe.

(k) "Johnson-O'Malley Act" means the Act of April 16, 1934 (48 Stat. 596), as amended by the Act of June 4, 1936 (49 Stat. 1458, 25 U.S.C. 452-456), and further amended by the Act of January 4, 1975 (88 Stat. 2203).

(l) "Operational support" means those expenditures for school operational costs in order to meet established State educational standards or State-wide requirements.

(m) "Pub. L. 93-638" means the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638; 88 Stat. 2203).

(n) "Previously private school" means a school (other than a Federal school formerly operated by the Bureau) that is operated primarily for Indian students from age 3 years through grades 12; and, which at the time of application is controlled, sanctioned, or chartered by the government body(s) of an Indian tribe(s).

(o) "Reservation" or "Indian Reservation" means any Indian tribe's reservation, Pueblo, Colony, or Rancheria, including former reservations in Oklahoma, Alaska Natives regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

(p) "School district" or "local education agency" means that subdivision of the State which contains the public elementary and secondary educational institutions providing educational services and is controlled by a duly elected board, commission, or similarly constituted assembly.

(q) "Secretary" means the Secretary of the Interior.

(r) "State" means a State of the United States of America or any political subdivision of a State.

(s) "Superintendent" means the official in charge of a Bureau of Indian Affairs Agency Office.

(t) "Supplemental programs" means those programs designed to meet the specialized and unique educational needs of eligible Indian students which may have resulted from socioeconomic conditions of the parents, from cultural or language diffrences or other factors, and as provided by § 273.34(b).

(u) "Tribal government," "tribal governing body" and "tribal Council" means the recognized governing body of an Indian tribe.

(v) "Tribal organization," means the recognized governing body of any Indian tribe or any legally established organization of Indians or tribes which is controlled, sanctioned, or chartered by such governing body or bodies, or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities; *Provided,* That a request for a contract must be made by the Indian tribe that will receive services under the contract; *Provided further,* That in any case where a contract is let to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting of such contract.

(w) "Assistant Secretary—Indian Affairs" means the Assistant Secretary—Indian Affairs who discharges the responsibility of the Secretary for activities pertaining to Indians and Indian Affairs.

[40 FR 51303, Nov. 4, 1975, as amended at 41 FR 5098, Feb. 4, 1976; 43 FR 37445, Aug. 23, 1978; 45 FR 13451, Feb. 29, 1980]

§ 273.3 Revision or amendment of regulations.

In order to make any substantive revision or amendments to regulations in this part, the Secretary shall take the following actions:

(a) Consult with Indian tribes and national and regional Indian organizations to the extent practicable about the need for revision or amendment and consider their views in preparing the proposed revision or amendment.

(b) Publish the proposed revisions or amendments in the FEDERAL REGISTER as proposed rulemaking to provide adequate notice to, and receive comments from, all interested parties.

(c) After consideration of all comments received, publish the regulations in the FEDERAL REGISTER in final

form not less than 30 days before the date they are made effective.

(d) Annually consult with Indian tribes and national and regional Indian organizations about the need for revision or amendment, and consider their views in preparing the revision or amendment.

(e) Nothing in this section shall preclude Indian tribes or national or regional Indian organizations from initiating request for revisions or amendments subject to paragraphs (a), (b), and (c) of this section.

§ 273.4 Policy of maximum Indian participation.

The meaningful participation in all aspects of educational program development and implementation by those affected by such programs is an essential requisite for success. Such participation not only enhances program responsiveness to the needs of those served, but also provides them with the opportunity to determine and affect the desired level of educational achievement and satisfaction which education can and should provide. Consistent with this concept, maximum Indian participation in the development, approval and implementation of all programs contracted under this Part shall be required.

Subpart B—Application Process

§ 273.11 Eligible applicants.

(a) Any State, school district, tribal organization or Indian corporation is eligible to apply for contracts for supplemental or operational support programs. For the purposes of this Part, previously private schools as defined in § 273.2(n) are considered tribal organizations.

(b) States, school districts, or Indian corporations shall apply for contracts for supplemental or operational support programs as required in this Part.

(c) Tribal organizations must comply with the following requirements to obtain contracts for supplemental programs or operational support:

(1) The application submitted by the tribal organization shall meet the requirements in § 273.20 in addition to those in § 271.14 of this chapter.

(2) The requirements in §§ 271.1 through 271.27, 271.41 through 271.52, 271.54, 271.61 through 271.66, and 271.81 through 271.84 shall apply to such contracts with tribal organizations.

(3) The provisions in §§ 271.71 through 271.77 of this chapter concerning retrocession and reassumption of programs do not apply to a tribal organization retroceding a contract for supplemental programs or operational support as the Bureau does not operate education programs authorized to be contracted under the Johnson-O'Malley Act. However, the tribal organization may retrocede such a contract and the Bureau will then contract with a State, school district, or Indian corporation under this Part for the supplemental programs or operational support.

(4) The requirements in §§ 273.12 through 273.18, 273.20, 273.21, 273.31 through 273.38, 273.41, 273.51 and 273.52 shall apply to such contracts with tribal organizations.

(5) The requirements in 41 CFR Part 14H-70 shall apply to such contracts with tribal organizations.

[40 FR 51303, Nov. 4, 1975, as amended at 41 FR 5098, Feb. 4, 1976]

§ 273.12 Eligible students.

Indian students, from age 3 years through grade(s) 12, except those who are enrolled in Bureau or sectarian operated schools, shall be eligible for benefits provided by a contract pursuant to this Part if they are ¼ or more degree Indian blood and recognized by the Secretary as being eligible for Bureau services. Priority shall be given to contracts (a) which would serve Indian students on or near reservations and (b) where a majority of such Indian students will be members of the tribe(s) of such reservations (as defined in § 273.2(o)).

§ 273.13 Proposals eligible for contracts.

(a) Any proposal to contract for funding a program which meets the definition of a supplemental program given in § 273.2(t) will be considered an eligible proposal under this Part.

(b) (1) To contract for operational support, a public school district shall

be required to establish as part of the proposal that:

(i) It cannot meet the applicable minimum State standards or requirements without such funds.

(ii) It has made a reasonable tax effort with a mill levy at least equal to the State average in support of educational programs.

(iii) It has fully utilized all other sources of financial aid, including all forms of State aid and Pub. L. 874 payments. The State aid contribution per pupil must be at least equal to the State average.

(iv) There is at least 70 percent eligible Indian enrollment within the school district.

(v) It shall clearly identify the educational needs of the students intended to benefit from the contract.

(vi) It has made a good faith effort in computing State and local contributions without regard to contract funds pursuant to this Part.

(vii) It shall not budget or project a deficit by using contract funds pursuant to this Part.

(2) The requirements given in paragraph (b)(1) of this section do not apply to previously private schools.

(c) At his discretion, the Commissioner may consider as eligible a proposal to contract under which a school district will be reimbursed for the full per capita costs of educating Indian students who meet all of the following:

(1) Are members of recognized Indian tribes.

(2) Do not normally reside in the State in which the school district is located.

(3) Are residing in Federal boarding facilities for the purpose of attending public schools within the school district.

§ 273.14 Preparing the education plan.

A prospective contractor in consultation with its Indian Education Committee(s) shall formulate an education plan and submit it to the appropriate Area Director as a part of the application to contract required by § 273.20. Such plan shall become a part of any contract awarded. The education plan shall contain:

(a) The education programs approved by the Indian Education Committee(s) as required in § 273.17.

(b) Other requirements for the education plan given in § 273.18.

§ 273.15 Establishment of Indian Education Committee.

(a) When a school district to be affected by a contract(s) for the education of Indians pursuant to this Part has a local school board not composed of a majority of Indians, the tribal governing body(s) of the Indian tribe(s) affected by the contract(s) under this Part shall specify one of the following entities to serve as the Indian Education Committee for the purpose of this Part:

(1) An Indian Education committee to be elected from among the parents (including persons acting *in loco parentis* except school administrators or officials) of eligible Indian students enrolled in the school(s) affected by a contract(s) under this Part; or

(2) A local Indian committee established pursuant to section 305(b)(2)(B)(ii) of the Act of January 23, 1972 (86 Stat. 235) and existing prior to January 4, 1975; or

(3) An Indian advisory school board or Indian Education Committee established pursuant to the Johnson-O'Malley Act and existing prior to January 4, 1975.

(b) When the local school board is not composed of a majority of Indians and the tribal governing body(s) of the Indian tribe(s) affected by a contract(s) under this Part determine which of the entities provided for in paragraph (a) of this section is to serve as the Indian Education Committee for the purpose of this Part, it shall notify the Area Director of such determination by January 15 preceding the school year for which the contract will be let.

(c) The Indian Education Committee established under paragraph (a) of this section and its members shall establish procedures under which the Committee shall serve. Such procedures shall be set forth in the Committee's organizational documents and by-laws. Each Committee shall file a copy of its organizational documents and by-laws with the appropriate Area

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Director, together with a list of its officers and members as soon as practicable after the Committee is organized.

(d) The existence of an Indian Education Committee shall not limit the continuing participation of the rest of the Indian community in all aspects of programs contracted under this Part.

§ 273.16 Powers and duties of Indian Education Committee.

(a) Consistent with the purpose of the Indian Education Committee, each such Committee shall be vested with the authority to:

(1) Participate fully in the planning, development, implementation, and evaluation of all programs, including both supplemental and operational support, conducted under a contract or contracts pursuant to this Part. Such participation shall include further authority to:

(i) Recommend curricula, including texts, materials, and teaching methods to be used in the contracted program or programs.

(ii) Approve budget preparation and execution.

(iii) Recommend criteria for employment in the program.

(iv) Nominate a reasonable number of qualified prospective educational programmatic staff members from which the contractor would be required to select.

(v) Evaluate staff performance and program results and recommend appropriate action to the contractor.

(2) Approve and disapprove all programs to be contracted under this Part. All programs contracted pursuant to this Part shall require the prior approval of the appropriate Indian Education Committee.

(3) Secure a copy of the negotiated contract(s) which include the program(s) approved by the Indian Education Committee.

(4) Recommend to the Commissioner through the appropriate Bureau contracting officer cancellation or suspension of a contract(s) which contains the program(s) approved by the Indian Education Committee if the contractor fails to permit such Committee to exercise its powers and duties as specified by this section.

(b) The organizational papers and by-laws of the Indian Education Committee may include additional powers and duties which would permit the Committee to:

(1) Participate in negotiations concerning all contracts under this Part.

(2) Make an annual assessment of the learning needs of Indian children in the community affected.

(3) Have access to all reports, evaluations, surveys, and other program and budget related documents determined necessary by the Committee to carry out its responsibilities, subject only to the provisions of § 273.49.

(4) Request periodic reports and evaluations regarding the Indian education program.

(5) Hear grievances related to programs in the education plan.

(6) Meet regularly with the professional staff serving Indian children and with the local education agency.

(7) Hold committee meetings on a regular basis which are open to the public.

(8) Have such additional powers as are consistent with these regulations.

§ 273.17 Programs approved by Indian Education Committee.

(a) All programs contracted under this Part shall:

(1) Be developed and approved in full compliance with the powers and duties of the Indian Education Committee as set out in § 273.16 and as may be contained in the Committee's organizational documents and by-laws.

(2) Be included as a part of the education plan provided for in § 273.14.

(b) No program contracted pursuant to this Part shall be changed from the time of its original approval by the Indian Education Committee to the end of the contract period without the prior approval, in writing, of the Committee.

(c) Programs developed or approved by the Indian Education Committee pursuant to this Part may, at the option of such Committee, include funds for the performance of Committee duties, including the following:

(1) Members' attendance at regular and special meetings, workshops and training sessions, as the Committee deems appropriate.

(2) Such other reasonable expenses incurred by the Committee in performing its primary duties, including the planning, development, implementation and evaluation of the program.

§ 273.18 Additional requirements for education plan.

In addition to incorporating the programs approved by the Indian Education Committee(s) as required by § 273.14(a), the education plan prepared by the prospective contractor shall:

(a) Contain educational goals and objectives which adequately address the educational needs of the Indian students to be served by the contract.

(b) Incorporate the program or programs developed and approved by the Indian Education Committee(s). As provided in § 273.17(b), changes in such programs must have prior written approval of the Indian Education Committee(s).

(c) Contain procedures for hearing grievances from Indian students, parents, community members, and tribal representatives relating to the program(s) contracted under this Part. Such procedures shall provide for adequate advance notice of the hearing.

(d) Identify established State standards and requirements which shall be maintained in operating programs and services contracted under this Part.

(e) Describe how the State standards and requirements will be maintained.

(f) Provide that the contractor shall comply in full with the requirements concerning meaningful participation by the Indian Education Committee as required by § 273.4.

(g) Provide that education facilities receiving funds shall be open to visits and consultations by the Indian Education Committee(s), tribal representatives, Indian parents in the community, and by duly authorized representatives of the Federal and State governments.

(h) Outline procedures of administrative and fiscal management to be used by the contractor.

(i) Contain justification for requesting funds for operational support. The public school district must establish in its justification that it meets the requirements given in § 273.13(b). The information given should include records of receipt of local, State, and Federal funds.

(j) Include budget estimates and financial information needed to determine program costs to contract for services. This includes, but is not limited to, the following:

(1) State and district average operational cost per pupil.

(2) Other sources of Federal funding the applicant is receiving, the amount received from each, the programs being funded, and the number of eligible Indian students served by such funding.

(3) Administrative costs involved, total number of employees, and total number of Indian employees.

(4) Costs which parents normally are expected to pay for each school.

(5) Supplemental and operational funds outlined in a separate budget, by line item, to facilitate accountability.

(6) Total number of employees for each special program and number of Indian employees for that program

(k) State the total enrollment of school or district, by age and grade level.

(l) State the eligible Indian enrollment—total and classification by tribal affiliation(s) and by age and grade level.

(m) State the total number of school board members and number of Indian school board members.

(n) List Government equipment needed to carry out the contract.

(o) State the period of contract term requested.

(p) Include the signature of the authorized representative of applicant.

(q) Provide written information regarding:

(1) Program goals and objectives related to the learning needs of potential target students.

(2) Procedures and methods to be used in achieving program objectives, including ways whereby parents, students and communities have been involved in determining needs and priorities.

(3) Overall program implementation including staffing practices, parental and community involvement, evalua-

tion of program results, and dissemination thereof.

(4) Determination of staff and program effectiveness in meeting the stated needs of target students.

§ 273.19 Obtaining application forms.

Application forms, instructions, and related application materials are available from Agency Superintendents, Area Directors and the Commissioner. Use of standard application forms will facilitate processing of applications. However, they are not required if the information required by § 273.20 is given in the application to contract.

§ 273.20 Content of application to contract.

An application for a contract under this Part shall be in writing and shall contain the following:

(a) Name, address, and telephone number of the proposed contractor.

(b) Name, address, and telephone number of the tribe(s) to be served by the contract.

(c) Descriptive narrative of the contract proposal.

(d) The education plan required by § 273.14.

(e) A separate budget outlining the Johnson-O'Malley funds for operational support and/or supplemental programs, by line item, to facilitate accountability.

(f) A clear identification of what educational needs the Johnson-O'Malley funds requested for operational support will address.

(g) Documentation of the requirements for operational support in § 273.13(b)(1).

§ 273.21 Tribal request for contract.

(a) An Indian tribal governing body(s) that desires that a contract be entered into with a tribal organization must so notify the Area Director no later than February 1 preceding the school year for which the contract will be let.

(b) If the tribal governing body's notice is not received by the date given in paragraph (a) of this section, the Area Director may contract with the State, school district, or Indian corporation under this Part.

§ 273.22 Application approval officials.

(a) Each Area Director is authorized to approve the contract(s) submitted by the State, school district, or Indian corporation under this Part which will provide services to Indian children within the jurisdiction of that Area Office.

(b) When a proposed contract(s) will provide services to Indian children within the jurisdiction of more than one Area Office, the contract must be approved by the Commissioner.

§ 273.23 Submitting application to Area Office.

When services under the proposed contract will be provided to Indian children within the jurisdiction of a single Area Office, the completed application shall be submitted to the Area Director of that Area Office.

§ 273.24 Area Office review and decision.

Upon receiving a contract application, the Area Director shall:

(a) Notify the applicant in writing that the application has been received. This notice shall be made within fourteen (14) days after the Area Office receives the application.

(b) Review the application for completeness and request within 20 days any additional information from the applicant which will be needed to reach a decision.

(c) On receiving an application for operational support, make formal written determination and findings supporting the need for such funds. In arriving at such a determination, the Area Director must be assured that each local education agency has made a good faith effort in computing State and local contributions without regard to funds requested pursuant to this Part.

(d) Assess the completed application to determine if the contract proposal is feasible and if the proposal and the application comply with the appropriate requirements of the Johnson-O'Malley Act and of the regulations in this Part.

(e) Approve or disapprove the application after fully reviewing and assessing the application and any additional

information submitted by the applicant.

(f) Promptly notify the applicant in writing of the decision to approve or disapprove the application. If the application is disapproved, the notice will give the reasons for disapproval and the applicant's right to appeal pursuant to Part 2 of this chapter.

§ 273.25 Deadline for Area Office action.

(a) The Area Director shall approve or disapprove an application for a contract within sixty (60) days after the Area Office receives the application and any additional information requested in § 273.24(b). The sixty (60) day deadline can be extended after obtaining the written consent of the applicant.

(b) An application under this Part cannot be approved before February 1 preceding the school year for which the contract will be let.

§ 273.26 Submitting application to Central Office.

When services under the proposed contract will be provided to Indian children within the jurisdiction of two or more Area Offices, the completed application shall be submitted to the Commissioner through the respective Area Offices.

§ 273.27 Central Office review and decision.

Upon receiving a contract application, the Commissioner shall:

(a) Notify the applicant in writing that the application has been received. This notice shall be made within fourteen (14) days after the Central Office receives the application.

(b) Review the application for completeness and request within 20 days any additional information from the applicant which will be needed to reach a decision.

(c) On receiving an application for operational support, make formal written determination and findings supporting the need for such funds. In arriving at such a determination, the Commissioner must be assured that each local education agency has made a good faith effort in computing State and local contributions without regard to funds requested pursuant to this Part.

(d) Assess the completed application to determine if the contract proposal is feasible and if the proposal and the application comply with the appropriate requirements of the Johnson-O'Malley Act and of the regulations in this Part.

(e) Approve or disapprove the application after fully reviewing and assessing the application and any additional information submitted by the applicant.

(f) Promptly notify the applicant in writing of the decision to approve or disapprove the application. If the application is disapproved, the notice will give the reasons for disapproval and the applicant's right to appeal pursuant to Part 2 of this chapter.

§ 273.28 Deadline for Central Office action.

(a) The Commissioner shall approve or disapprove an application for a contract within sixty (60) days after the Central Office receives the application, and any additional Information requested in § 273.27(b). The sixty (60) day deadline can be extended after obtaining the written consent of the applicant.

(b) An application under this Part cannot be approved before February 1 preceding the school year for which the contract will be let.

§ 273.29 Negotiating the contract.

After the proposal for a contract has been approved by the Area Director or Commissioner as provided in § 273.22, the contract will be negotiated by a Bureau contracting officer assisted by Bureau education personnel.

Subpart C—Funding Provisions

§ 273.31 Distribution formula.

(a) Funds shall be distributed to eligible contractors based upon the number of eligible Indian students to be served times twenty-five (25%) percent of the higher of the State or national average per pupil operating cost. Notwithstanding any other provisions of the law, Federal funds appropriated for the purpose shall be allot-

ted pro rata in accordance with the distribution method outlined in this formula.

(b) The Assistant Secretary may make exceptions to the provisions of paragraph (a) of this section based on the special cultural, linguistic, social or educational needs of the communities involved including the actual cost of education in the community only after consultation with all tribes who may be affected by such exceptions.

(25 U.S.C. 452-456; sec. 202, Pub. L. 93-638, 88 Stat. 2203, and Pub. L. 95-561, sec. 1102 (a) and (b))

[45 FR 9241, Feb. 11, 1980]

§ 273.32 Pro rata requirement.

All monies provided by a contract pursuant to this Part, shall be expended only for the benefit of eligible Indian students. Where students other than eligible Indian students participate in programs contracted under this part, money expended under such contract shall be prorated to cover the participation of only the eligible Indian students, except where the participation of non-eligible students is so incidental as to be de minimus. Such de minimus participation must be approved by the Indian Education Committee.

§ 273.33 Use of funds for operational support.

All funds for school operational support shall be used to meet established State educational standards or Statewide requirements.

§ 273.34 Use of other Federal, State and local funds.

(a) Contract funds under this part shall supplement, and not supplant, Federal, State and local funds. Each contract shall require that the use of these contract funds will not result in a decrease in State, local, or Federal funds which would be made available for Indian students if there were no funds under this Part.

(b) State, local and other Federal funds must be used to provide comparable services to non-Indian and Indian students prior to the use of Johnson-O'Malley funds for the provision of supplementary program services to Indian children.

(c) Funds for operational support shall be used only as prescribed in § 273.33.

§ 273.35 Capital outlay or debt retirement.

In no instance shall contract funds provided under this part be used as payment for capital outlay or debt retirement expenses; except that, such costs are allowable if they are considered to be a part of the full per capita cost of educating eligible Indian students who reside in Federal boarding facilities for the purpose of attending public schools.

§ 273.36 Eligible subcontractors.

No contract funds under the Johnson-O'Malley Act shall be made available by the Bureau directly to other than tribal organizations, States, school districts and Indian corporations. However, tribal organizations, States, school districts, and Indian corporations receiving funds under this part may use the funds to subcontract for necessary services with any appropriate individual, organization or corporation.

§ 273.37 Use of funds outside of schools.

Nothing in these regulations shall prevent the Commissioner from contracting with Indian corporations who will expend all or part of the funds in places other than the public or private schools in the community affected.

§ 273.38 Equal quality and standard of education.

Contracts with State education agencies or school districts receiving funds under the provisions of this part shall provide educational opportunities to all Indian children within that school district on the same terms and under the same conditions that apply to all other students provided that it will not affect the rights of eligible Indian children to receive benefits from the supplemental programs as provided for in this part. School districts receiving funds under this part must insure that Indian children receive all aid from the State, and other proper sources other than this contract, which other schools in the district and other school districts similarly situated in the State are entitled to

receive. In no instance shall there be discrimination against Indians or schools enrolling such Indians.

Subpart D—General Contract Requirements

§ 273.41 Special program provisions to be included in contract.

All contracts under this Part shall contain the following:

(a) The education plan required by §§ 273.14 and 273.18 and, as part of the education plan, the education programs approved by the Indian Education Committee(s) under § 273.17.

(b) Any formal written determination and findings made by the Area Director or Commissioner supporting the need for operational support as required by §§ 273.24(c) and 273.27(c).

(c) The provision that State, local, and other Federal Funds shall be used to provide comparable services to non-Indian and Indian students prior to the use of Johnson-O'Malley funds for the provision of supplementary program services to Indian children, as required in § 273.34(b).

§ 273.42 Civil Rights Act violations.

In no instance shall there be discrimination against Indians or schools enrolling such Indians. When informed by a complainant or through its own discovery that possible violation of Title VI of the Civil Rights Act of 1964 exists within a State school district receiving funds under this Part, the Department of the Interior shall, in accordance with Federal requirements, notify the Department of Health, Education, and Welfare of the possible violation of Title VI. The Department of Health, Education, and Welfare will conduct an investigation into the matters alleged, pursuant to a Memorandum of Understanding between the Department of the Interior and the Department of Health, Education, and Welfare. If the report of the investigation conducted by the Department of Health, Education, and Welfare discloses a failure or threatened failure to comply with this Part, and if the non-compliance cannot be corrected by informal means, compliance with this Part may be effected by the suspension or termination of or refusal to contract or to continue financial assistance under the Johnson-O'Malley Act or by any other means authorized by law. As delineated in 43 CFR 17.1, 17.8, and 17.9, such other means may include reference to the Department of Justice with a recommendation that appropriate legal proceedings be brought by the United States to secure compliance or by formal hearing before the Commissioner or, at his discretion, before an administrative law judge designated in accordance with section 11 of the Administrative Procedure Act. The Secretary, may, by agreement with one or more other Federal departments, provide for the conduct of consolidated or joint hearings as prescribed in 43 CFR 17.8(e).

§ 273.43 Advance payments.

Advance payments to States, school districts and Indian corporations will be made in accordance with the applicable provisions of 41 CFR 1 as supplemented by 41 CFR 14 and 41 CFR 14H except 41 CFR Part 14H-70.

§ 273.44 Use and transfer of Government property.

(a) The use of Government-owned facilities for school purposes may be authorized when not needed for Government activities. Transfer of title to such facilities (except land) may be arranged under the provisions of the Act of June 4, 1953 (67 Stat. 41) subject to the approval of the tribal government if such property is located on a reservation.

(b) In carrying out a contract made under this Part, the Area Director or Commissioner may, with the approval of the tribal government, permit a contractor to use existing buildings, facilities, and related equipment and other personal property owned by the Bureau within his jurisdiction under terms and conditions agreed upon for their use and maintenance. The property at the time of transfer must conform to the minimum standards established by the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651). Use of Government property is subject to the following conditions:

(1) When nonexpendable Government property is turned over to public school authorities or Indian corporations under a use permit, the permittee shall insure such property against damage by flood, fire, rain windstorm, vandalism, snow, and tornado in amounts and with companies satisfactory to the Federal officer in charge of the property. In case of damage or destruction of the property by flood, fire, rain, windstorm, vandalism, snow or tornado, the insurance money collected shall be expended only for repair or replacement of property. Otherwise, insurance proceeds shall be paid to the Bureau.

(2) If the public school authority is self-insured and can present evidence of that fact to the Area Director or Commissioner, insurance for lost or damaged property will not be required. However, the public school authority will be responsible for replacement of such lost or damaged property at no cost to the Government or for paying the Government enough to replace the property.

(3) The permittee shall maintain the property in a reasonable state of repair consistent with the intended use and educational purposes.

(c) The contractor may have access to existing Bureau records needed to carry out a contract under this Part, as follows:

(1) The Bureau will make the records available subject to the provisions of the Freedom of Information Act (5 U.S.C. 552), as amended by the Act of November 21, 1974 (Pub. L. 93-502, 88 Stat. 1561).

(2) The contractor may have access to needed Bureau records at the appropriate Bureau office for review and making copies of selected records.

(3) If the contractor needs a small volume of identifiable Bureau records, the Bureau will furnish the copies to the contractor.

§ 273.45 Indian preference.

(a) Any contract made by the Bureau with a State, school district or Indian corporation shall provide that the contractor shall, to the greatest extent feasible, give preference in and opportunities for employment and training to Indians.

(b) Any contract made by the Bureau with a State, school district or Indian corporation shall provide that the contractor shall, to the greatest extent feasible, give preference in the award of subcontracts to Indian organizations and Indian-owned economic enterprises.

(c) All subcontractors employed by the contractor shall, to the extent possible, give preference to Indians for employment and training and shall be required to include in their bid submission a plan to achieve maximum use of Indian personnel.

(d) In the performance of contracts under this Part 273 and subject to the provisions of Part 14H of Title 41, a tribal governing body may develop its own Indian preference requirements to the extent that such requirements are not inconsistent with the purpose and intent of paragraphs (a), (b) and (c) of this section.

§ 273.46 Liability and motor vehicle insurance.

(a) States, school districts and Indian corporations shall obtain public liability insurance under contracts entered into with the Bureau under this Part. However, where the Bureau contracting officer determines that the risk of death, personal injury or property damage under the contract is small and that the time and cost of procuring the insurance is great in relation to the risk, the contractor may be exempted from this requirement.

(b) Notwithstanding paragraph (a) of this section, any contract which requires or authorizes, either expressly or by implication, the use of motor vehicles must contain a provision requiring the State, school district, or Indian corporation to provide liability insurance, regardless of now small the risk.

(c) If the public school authority is self-insured and can present evidence of that fact to the Area Director or Commissioner, liability and motor vehicle insurance will not be required.

§ 273.47 Recordkeeping.

A contractor will be required to maintain a recordkeeping system which will allow the Bureau to meet its legal records program requirements under the Federal Records Act (44

U.S.C. 3101 et seq.). Such a record system shall:

(a) Fully reflect all financial transactions involving the receipt and expenditure of funds provided under the contract in a manner which will provide accurate, current and complete disclosure of finanical status; correlation with budget or allowable cost schedules; and clear audit facilitating data.

(b) Reflect the amounts and sources of funds other than Bureau contract funds which may be included in the operation of the contract.

(c) Provide for the creation, maintenance and safeguarding of records of lasting value, including those involving individual rights, such as permanent records and transcripts.

(d) Provide for the orderly retirement of permanent records in accordance with General Records Schedules and the Bureau Records Control Schedule, when there is no established system set up by the State, school district, or Indian corporation.

§ 273.48 Audit and inspection.

(a) During the term of a contract under this Part and for three years after the project or undertaking is completed, the Comptroller General and the Secretary, or any of their duly authorized representatives, shall have access, for audit and examination purposes, to any of the contractor's books, documents, papers, and records which, in their opinion, may be related or pertinent to the contract or any subcontract.

(b) The contractor will be responsible for maintaining all documents such as invoices, purchase orders, canceled checks, balance sheets and all other records relating to financial transactions in a manner which will facilitate auditing. The contractor will be responsible for maintaining files of correspondence and other documents relating to the administration of the contract properly separated from general records or cross-referenced to general files.

(c) The contractor receiving funds under this Part shall be responsible for contract compliance.

(d) The records involved in any claim or expenditure that has been questioned shall be further maintained until final determination has been made on the questioned expenditures.

(e) All contracts, non-confidential records concerning all students served by the program, reports, budgets, budget estimates, plans, and other documents pertaining to preceding and current year administration of the contract program shall be made available by the contractor and local school officials to each member of the Indian Education Committee and to members of the public upon request. The contractor or local school official shall provide, free of charge, single copies of such documents upon request.

§ 273.49 Freedom of information.

(a) Unless otherwise required by law, the Bureau shall not place restrictions on contractors which will limit public access to the contractor's records except when records must remain confidential.

(b) A contractor under this Part shall make all reports and information concerning the contract available to the Indian people which the contract affects. Reports and information may be withheld from disclosure only when both of the following conditions exist:

(1) The reports and information fall within one of the following exempt categories:

(i) Specifically required by statute or Executive Order to be kept secret.

(ii) Commercial or financial information obtained from a person or firm on a privileged or confidential basis.

(iii) Personnel, medical, social, psychological, academic achievement and similar files where disclosure would be a clearly unwarranted invasion of personal privacy.

(2) Disclosure is prohibited by statue or Executive Order or sound grounds exist for using the exemption given in paragraph (b)(1) of this section.

(c) A request to inspect or copy reports and information shall be in writing and must reasonably describe the reports and information requested. The request may be delivered or mailed to the contractor. Within ten (10) working days after receiving the request, the contractor shall determine whether to grant or deny the re-

quest. The requester shall be notified immediately of the determination.

(d) The time limit for making a determination may be extended up to an additional ten (10) working days for good reason. The requester shall be notified in writing of the extension, reasons for the extension, and date on which the determination is expected to be made.

§ 273.50 Annual reporting.

(a) A contractor under this Part shall make a detailed annual report to the approving official before September 15 of each year and covering the previous school year. The report shall include, but not be limited to, an accounting of the amounts and purposes for which the contract funds were expended, information on the conduct of the program, a quantitative evaluation of the effectiveness of the contract program in meeting the stated objectives contained in the applicant's educational plans, and a complete accounting of actual receipts at the end of the contract period.

(b) In addition to the yearly reporting requirement given in paragraph (a) of this section, the contractor shall furnish other contracted-related reports when and as required by the Area Director or Commissioner.

(c) A contractor under this Part shall send copies of the reports required by paragraphs (a) and (b) of this section to the Indian Education Committee(s) and to the tribe(s) under the contract at the same time as the reports are sent to the Bureau.

§ 273.51 Penalties.

If any officer, director, agent, or employee of, or connected with, any contractor or subcontractor under this Part embezzles, willfully misapplies, steals, or obtains by fraud any of the funds or property connected with the contract or subcontract, he shall be subject to the following penalties:

(a) If the amount involved does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) If the amount involved exceeds $100, he shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

§ 273.52 State school laws.

In those States where Public Law 83-280, 18 U.S.C. 1162 and 28 U.S.C. 1360 do not confer civil jurisdiction, State employees may be permitted to enter upon Indian tribal lands, reservations, or allotments if the duly-constituted governing body of the tribe adopts a resolution of consent for the following purposes:

(a) Inspecting school conditions in the public schools located on Indian tribal lands, reservations, or allotments.

(b) Enforcing State compulsory school attendance laws against Indian children, parents or persons standing in *loco parentis*.

§ 273.53 Applicable procurement regulations.

States, school districts, or Indian corporations wanting to contract with the Bureau under this part must comply with the applicable requirements in the Federal Procurement Regulations (41 CFR Part 1), as supplemented by the Interior Procurement Regulations (41 CFR Part 14), and the Bureau of Indian Affairs Procurement Regulations (41 CFR Part 14H), except 41 CFR Part 14H-70.

§ 273.54 Privacy Act requirements.

(a) When a contractor operates a system of records to accomplish a Bureau function, the contractor shall comply with Subpart D of 43 CFR Part 2 which implements the Privacy Act (5 U.S.C. 552a). Examples of the contractor's responsibilities are:

(1) To continue maintaining those systems of records declared by the Bureau to be subject to the Privacy Act as published in the FEDERAL REGISTER.

(2) To make such records available to individuals involved.

(3) To disclose an individual's record to third parties only after receiving permission from the individual to whom the record pertains. 43 CFR 2.56 lists exceptions to this procedure.

(4) To establish a procedure to account for access, disclosures, denials, and amendments to records.

(5) To provide safeguards for the protection of the records.

(b) The contractor may not:

(1) Discontinue or alter any established systems of records without prior approval of the appropriate Bureau systems manager.

(2) Deny requests for notification or access of records without prior approval of the appropriate Bureau systems manager.

(3) Approve or deny requests for amendments of records without prior approval of the appropriate Bureau systems manager.

(4) Establish a new system of records without prior approval of the Department of Interior and the Office of Management and Budget.

(5) Collect information about an individual unless it is relevant or necessary to accomplish a purpose of the Bureau as required by statue or Executive Order.

(c) The contractor is subject to the penalties provided in subsection (i) of 5 U.S.C. 552a.

Subpart E—Contract Revision or Cancellation

§ 273.61 Contract revision or amendment.

Any contract made under this Part may be revised or amended as deemed necessary to carry out the purposes of the program being contracted. A contractor may make a written request for a revision or amendment of a contract to the Bureau contracting officer. However, no program approved by the Indian Education Committee shall be altered from the time of its original approval to the end of the contract period without the written approval of the Committee.

§ 273.62 Cancelling a contract for cause.

(a) Any contract entered into under this Part may be cancelled for cause when the contractor fails to perform the work called for under the contract or fails to permit an Indian Education Committee to perform its duties pursuant to this Part.

(b) Before cancelling the contract, the Bureau will advise the contractor in writing of the following:

(1) The reasons why the Bureau is considering cancelling the contract.

(2) The contractor will be given an opportunity to bring its work up to an acceptable level.

(c) If the contractor does not overcome the deficiencies in its contract performance, the Bureau shall cancel the contract for cause. The Bureau will notify the contractor, in writing, of the cancellation. The notice shall give the reasons for the cancellation and the right of the contractor to appeal under Subpart C of 43 CFR Part 4.

(d) When a contract is cancelled for cause, the Bureau will attempt to perform the work by another contract.

(e) Any contractor that has a contract cancelled for cause must demonstrate that the cause(s) which led to the cancellation have been remedied before it will be considered for another contract.

Subpart F—Appeals

§ 273.71 Contract appeal.

A contractor may appeal an adverse decision or action of a Bureau contracting officer regarding a contract under this Part as provided in Subpart C of 43 CFR Part 4.

§ 273.72 Appeal from decision to cancel contract for cause.

A contractor may appeal the decision of a Bureau official to cancel a contract under this Part for cause. The appeal shall be made as provided in Subpart C of 43 CFR Part 4.

§ 273.73 Other appeals.

Any decision or action taken by a Bureau official under this Part, other than those given in §§ 273.71 and 273.72, may be appealed as provided in Part 2 of this chapter.

PART 274—SCHOOL CONSTRUCTION CONTRACTS OR SERVICES FOR TRIBALLY OPERATED PREVIOUSLY PRIVATE SCHOOLS

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Subpart D—Appeals

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274.52 Appeal from decision to cancel contract for cause.
274.53 Other appeals.

AUTHORITY: Sections 204 and 208, Pub. L. 93-638, 88 Stat. 2203, 2214-2216 and 2216-2217 (25 U.S.C. 458 and 458d).

SOURCE: 40 FR 51310, Nov. 4, 1975, unless otherwise noted.

Subpart A—General Provisions

§ 274.1 Purpose.

The purpose of the regulations in this Part is to give the application and approval process for obtaining a contract or services from the Bureau for school construction for previously private schools now controlled and operated by tribes or tribally approved Indian organizations under sections 204 and 208 of Title II of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, 88 Stat. 2203).

§ 274.2 Scope.

The Act authorizes the expenditure of funds authorized and appropriated under Part B of the Act to contract or provide services for school construction for tribally operated previously private schools. After an application has been completed and approved by the tribe, the application is forwarded through Bureau channels to the Commissioner for ranking by priority. If a project is within the funding priority, the Bureau contracting officer offers to negotiate a contract with the applicant subject to approval by the requesting tribe(s) for planning, architectural-engineering design, facilities construction, and purchase of equipment to provide educational facilities meeting Bureau space standards and construction code regulations. Subject to approval by the requesting tribe(s), the applicant then has the following options:

(a) Enter into a contract with the Bureau under which the applicant performs all or part of the necessary work with the Bureau performing the rest.

(b) Request that the Bureau perform or arrange for the performance of all the necessary work.

[40 FR 51303, Nov. 4, 1975, as amended at 43 FR 37445, Aug. 23, 1978]

§ 274.3 Definitions.

As used in this Part:

(a) "Act" means the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, 88 Stat. 2203).

(b) "Area Director" means the official in charge of a Bureau of Indian Affairs Area Office.

(c) "Attendance area" means, in relation to a particular school, the area in which the children who are normally served by that school reside.

(d) "Bureau" means the Bureau of Indian Affairs.

(e) "Commissioner," means the Commissioner of Indian Affairs, under the direction and supervision of the Assistant Secretary—Indian Affairs, who is responsible for the direction of the day-to-day operations of the Bureau of Indian Affairs.

(f) "Contractor" means an applicant who has been awarded a contract under this Part.

(g) "Days" means calendar days.

(h) "Economic enterprise" means any commercial, industrial, agricultural, or business activity that is at least 51 percent Indian owned, established or organized for the purpose of profit.

(i) "Existing school facilities" means all facilities constructed as school buildings and used continuously for classroom purposes. Excluded are basement rooms, hallways, or other space, the use of which for school purposes (in view of the character, inaccessibility or other equally cogent reasons) seriously restricts the educational objective, or has impaired or will impair the health or safety of the school children.

(j) "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(k) "Indian" means a person who is a member of an Indian tribe.

(l) "Initial equipment" means any movable equipment necessary and appropriate to equip minimum school facilities. Such term does not include equipment purchased to replace any equipment which is obsolete or worn out and which was purchased with funds under the Act.

(m) "Minimum school facilities" means classroom and auxiliary rooms and initial equipment necessary to operate an approved educational program for the membership of the school at normal capacity in accordance with criteria established by the Bureau.

(n) "Previously private school" means a school (other than a Federal school formerly operated by the Bureau), that is operated primarily for Indian students from age 3 years through grade(s) 12; and, which at the time of application is controlled, sanctioned, or chartered by the governing body(s) of an Indian tribe(s).

(o) "Secretary" means the Secretary of the Interior.

(p) "Superintendent" means the official in charge of a Bureau of Indian Affairs Agency Office.

(q) "Tribal government," "tribal governing body," and "tribal council" means the recognized governing body of an Indian tribe.

(r) "Tribal organization" means the recognized governing body of any Indian tribe; or any legally established organization of Indians or tribes which is controlled, sanctioned, or chartered by such governing body or bodies or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities; *Provided,* That a request for a contract or services must be made by the Indian tribe that will receive services under the contract or from the Bureau by other means; *Provided further,* That in any case where a contract or services will affect more than one Indian tribe, the approval of each such Indian tribe shall be prerequisite to the approval of the application for the contract or services.

(s) "Assistant Secretary—Indian Affairs" means the Assistant Secretary—Indian Affairs who discharges the authority and responsibility of the Secretary for activities pertaining to Indians and Indian affairs.

[40 FR 51310, Nov. 4, 1975, as amended at 43 FR 37445, Aug. 23, 1978; 45 FR 13452, Feb. 29, 1980]

§ 274.4 Effect on existing Indian rights.

Nothing in these regulations shall be construed as:

(a) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe;

(b) Authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people; or

(c) Permitting significant reduction in services to Indian people as a result of this Part.

§ 274.5 Revision or amendment of regulations.

In order to make any substantive revisions or amendments to regulations in this Part, the Secretary shall take the following actions:

(a) Consult with Indian tribes and national and regional Indian organizations to the extent practicable about the need for revision or amendment and consider their views in preparing the proposed revision or amendment.

(b) Publish the proposed revisions or amendments in the FEDERAL REGISTER as proposed rulemaking to provide adequate notice to, and receive comments from, all interested parties.

(c) After consideration of all comments received, publish the regulations in the FEDERAL REGISTER in final form not less than 30 days before the date they are made effective.

(d) Annually consult with Indian tribes and national and regional Indian organizations about the need for revision or amendment, and consider their views in preparing the revision or amendment.

(e) Nothing in this section shall preclude Indian tribes or national or regional Indian organizations from initiating requests for revisions or amendments subject to paragraph (a), (b), and (c), of this section.

Subpart B—Application Process

§ 274.11 Eligible applicants.

Any tribal organization which meets all of the following criteria is eligible to apply for a contract with or services from the Bureau for school construction:

(a) The tribal organization must control and manage the previously private school for which the organization is applying for a contract or services under this Part.

(b) Title to the land on which the construction for the previously private school is located must be vested in the tribe or the United States, or a lease for 25 years with an option for an additional 25 years must be entered into with the tribe or the United States for the ground on which the construction is located.

(c) The previously private school controlled and managed by the tribal organization must have a minimum current enrollment or projection of 25 students through grade(s) 8 and/or 50 students in grades 9 through 12.

[40 FR 51310, Nov. 4, 1975, as amended at 43 FR 37445, Aug. 23, 1978]

§ 274.12 Obtaining application forms.

Application forms, instructions and related application materials are available from Agency Superintendents, Area Directors and the Commissioner. Use of standard application forms will facilitate processing of applications. However, they are not required if the information contained in § 274.13 is stated in the applicant tribe's request for a contract or services.

§ 274.13 Contents of application.

An application for funding under this Part shall be in writing and shall contain the following information:

(a) Full name, address and telephone number of the tribal organization which is applying for the contract or services.

(b) Full name of tribe(s) with which the tribal organization is affiliated.

(c) Full name of tribe(s) directly benefiting or receiving services from the proposed contract or from the Bureau by other means.

(d) Documentation of the tribal request in the form of a resolution as outlined in § 274.15.

(e) Date of submission to the Bureau and the name of the office where the application was submitted.

(f) Signature by the authorized representative of the tribal organization and the date thereof.

(g) Outline of the educational program including:

(1) Narrative description of elementary programs with educational philosophy.

(2) Narrative description of secondary programs with educational philosophy. If application is for secondary facility, include course offering with each course outlining enrollment, class size, class meetings per week, minutes per class and fraction of year taught.

(3) What will happen to the education of the students now, in 1 to 3 years and in 4 to 10 years if the proposed facilities are not constructed? Discuss all available options, including but not limited to:

(i) Off-reservation boarding schools.

(ii) On-reservation boarding schools.

(iii) Public, Bureau or other day schools.

(iv) Temporary facilities.

(h) Outline geographic attendance boundaries and include:

(1) Map of attendance area with description.

(2) Description of other Federal, public and/or private schools within the above attendance boundary.

(3) Discussion of impact the project will have on the schools listed in paragraph (h)(2) of this section and on feeder schools.

(4) Bus routes and/or change in bus routes caused by construction of facilities.

(i) Outline school enrollment characteristics and data including:

(1) Present total enrollment and enrollment by grade.

(2) Enrollment for the past six years by total and by grade.

(3) Estimate of enrollment by year for the next five years by total and by grade.

(4) Source and/or reasons for any student population growths.

(5) Number of students residing in attendance area but enrolled in other schools number of students attending school but residing outside attendance area, and number of people by age group residing in attendance area between one and twenty-five. The data should be current as of the time of application.

(j) Outline project description and justification data including:

(1) Function of proposed new facility, i.e., kitchen-dining building for 300 students grades K-8, etc.

(2) Data such as capacity, date constructed, square footage and condition of existing facility described in paragraph (j)(1) of this section which needs to be replaced.

(3) Problems which may be encountered such as lack of adequate construction site, disputed jurisdiction, flood plain, soil conditions, archeological clearance, lack of electric power or water.

(4) Justification for project (Choose one and explain):

(i) The facility has been destroyed by a natural disaster.

(ii) The facility is unsafe or unsanitary. Documentation in the form of an engineering and/or safety report must be included for facilities that are unsafe or unsanitary. Also, there are no local educational facilities available that can provide seats for the unhoused students.

(iii) The same conditions exist as given in paragraph (j)(4)(ii) of this section for unsafe or unsanitary facilities except that other facilities can be used to seat the unhoused students temporarily.

(iv) Unhoused pupils due to enrollment and population changes.

(v) The facility is functionally obsolete. It will not meet the education program or other requirements for such reasons as poor arrangement of rooms, inadequate spaces and need for structural and utility changes.

(vi) The facility is functionally obsolete due to age. Operation and maintenance is costly and the facility is impractical to maintain.

(vii) The facility will make it possible for children to attend school nearer their home.

(5) A current overall plan for constructing Bureau facilities, prepared by the Bureau and approved by the tribes affected.

(6) Attendance area school construction plans and memoranda of agreement. Attach any school construction plans for the applicable attendance area for all Federal, public or private schools and any memoranda of agreement concerning such plans. If there

are none, a current status report shall be submitted.

[40 FR 51310, Nov. 4, 1975, as amended at 41 FR 5098, Feb. 4, 1976]

§ 274.14 Assistance in completing applications.

An applicant may obtain assistance in completing the application forms from the Agency or Area Offices. The Superintendent, Area Director, or Commissioner shall make any information available to the applicant needed to prepare the application except as restricted from disclosure by the Freedom of Information Act (5 U.S.C. 552), as amended by the Act of November 21, 1974 (Pub. L. 93-502; 88 Stat. 1561).

§ 274.15 Tribal request.

(a) Before the Bureau can approve a tribal organization's application for a contract or services, it must be requested to do so by the Indian tribe to be affected by the contract or services. The Indian tribe's request shall be in the form of a resolution by the tribal governing body. If the tribal organization is applying for a contract or services which will affect more than one tribe, an authorizing resolution from each tribal governing body must be obtained before submitting the application to the Bureau for approval.

(b) The resolution of the tribal governing body shall also specify the tribal organization which is to operate the school. The resolution shall include the results of the vote (the number for and against), the date the resolution was approved, and signature of the person authorized to certify the accuracy of the information contained in the resolution.

(c) The tribal governing body's request (resolution) should include the following:

(1) When the tribal organization is the tribal governing body, the expiration date of the authorities granted by the resolution.

(2) When the tribal organization is other than the tribal governing body:

(i) The name of the tribal organization.

(ii) The tribal office or official to which the Bureau should send copies of documents and correspondence.

(iii) Any limitations on authorities granted the tribal organization.

(3) The tribal governing body's approval or disapproval of the Bureau's current overall educational facilities construction plan which includes the new construction proposed by this project to insure:

(i) Coordination of facility construction with public school projects.

(ii) Coordination of facility construction with other agencies.

(iii) Approval and support of the proposed project.

(d) Any procedures given in this section concerning the manner in which a tribal governing body passes a tribal constitution, law, code, ordinance, or other written document. In such cases, the tribal law or procedures shall be cited in the resolution and shall take precedence.

§ 274.16 Where to submit application.

(a) The completed application with documentation of the tribal request(s) shall be delivered or mailed to the Superintendent having jurisdiction over the tribe(s) requesting the contract or services.

(b) When the contract or services requested in the application will benefit more than one tribe under the jurisdiction of more than one Agency Office within one Area, the application and documentation of the tribal requests shall be delivered or mailed to the Area Director involved.

(c) When the contract or services requested in the application will benefit more than one tribe under the jurisdiction of more than one Area Office, the application and documentation of the tribal requests shall be delivered or mailed to the Commissioner.

§ 274.17 When to submit application.

Applications may be submitted by a tribal organization to the Bureau at any time. However, only those applications received by the beginning of the fiscal year shall be included in the priority listing for that fiscal year. Applications received after the beginning of the fiscal year shall not be included in the priority listing until the following fiscal year.

[43 FR 37445, Aug. 23, 1978]

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§ 274.18 Agency Office review and action.

(a) The Superintendent has 30 days from receipt of an application to notify the applicant in writing of its receipt, review the application for completeness, and request any needed information from the applicant.

(b) When the Superintendent has determined that the application is complete, he will forward to the Area Director having jurisdiction over that Agency Office the following:

(1) The completed application.

(2) Documentation of the tribal request(s).

(3) A written statement that the application is complete.

(4) A written statement on the sources and amount of funding, deficits, and stability of the program budget.

[40 FR 51310, Nov. 4, 1975, as amended at 43 FR 37446, Aug. 23, 1978]

§ 274.19 Area Office review and action.

Within 30 days after receiving an application directly or from the Superintendent, the Area Director will take the following actions:

(a) Notify the applicant in writing that the application was received in the Area Office.

(b) Review each application submitted directly to the Area Office as provided in § 274.16(b) for completeness and obtain any needed information from the applicant.

(c) [Reserved]

(d) Forward to the Commissioner the same items listed in paragraphs (1) through (4) of § 274.18(b).

[40 FR 51310, Nov. 4, 1975, as amended at 43 FR 37446, Aug. 23, 1978]

§ 274.20 Priorities for funding construction.

As prescribed in § 274.21(b), the Commissioner shall evaluate and assign priorities on the basis of the application data submitted as required by § 274.13 including:

(a) Education program required by § 274.13(g).

(b) Geographic attendance boundaries given in § 274.13(h).

(c) Enrollment characteristics given in § 274.13(i).

(d) Project description and justification required by § 274.13(j).

[40 FR 51310, Nov. 4, 1975, as amended at 43 FR 37446, Aug. 23, 1978]

§ 274.21 Central Office review and action.

After receiving an application directly or from the Area Director the Commissioner will take the following actions:

(a) Notify the applicant in writing that the application was received in the Central Office.

(b) Review each application submitted directly to the Commissioner as given in § 274.16(c) for completeness, request any needed information from the applicant, and assign the proposed project a priority.

(c) At the beginning of the fiscal year, update the Bureau-wide priority listing of all approved projects in order of priority with the project with the highest priority listed first. New applications received after the beginning of the fiscal year shall be included in the update of the priority listing at the beginning of the following fiscal year.

(d) Notify each applicant in writing of the project's priority ranking on the updated Bureau-wide list each fiscal year.

[40 FR 51310, Nov. 4, 1975, as amended at 43 FR 37446, Aug. 23, 1978]

§ 274.22 On-site inspection and cost estimate.

(a) The Commissioner or his representative shall conduct an on-site inspection for projects high on the priority listing and for which funding is available, beginning with the project ranked highest on the Bureauwide priority listing. The on-site inspection is to determine which buildings are to be retained, demolished or remodeled and to gather initial information required for development of the planning document.

(b) From this information, a tentative cost estimate for planning, design, construction, and equipment will be made for budget purposes in cooperation with the tribal organization.

[40 FR 51310, Nov. 4, 1975, as amended at 43 FR 37446, Aug. 23, 1978]

§ 274.23 Preparing a commitment-to-fund listing.

As each high priority project is given an on-site inspection and a tentative cost estimate is made, the project will be placed on a commitment-to-fund listing. Projects will be added as long as the total of the tentative cost estimates is less than the amount of funds appropriated for previously private school construction for the new fiscal year. Each applicant will be notified in writing when the project has been placed on the commitment-to-fund listing.

§ 274.24 Performing construction work.

When a project has been placed on the commitment-to-fund listing, the applicant will be given the following options, subject to approval by the requesting tribe(s):

(a) To negotiate a contract with the Bureau to perform all of the work or part of the work needed for the project with the Bureau performing the rest. Such contracts shall comply with the requirements in Subpart C of this Part and with 41 CFR Part 14H-70.

(b) To have the Bureau perform or arrange for the performance of all the work needed.

§ 274.25 Reapplication.

Once an applicant has applied for a contract or services and the project has been placed on the Bureauwide priority listing, there is no need to reapply. The project will be carried on the priority listing until placed on the commitment-to-fund list. However, if changes occur which would affect the project's rank and, thus, its priority, the applicant must submit a new application.

§ 274.26 Funding provisions.

(a) No funds from any contract under this Part shall be made available by the Bureau directly to other than Indian tribes and tribal organizations. However, Indian tribes and tribal organizations assisted under this Part may use funds provided to subcontract for necessary services.

(b) Twenty-five (25) per cent of all funds appropriated under Title II, Part B, section 204 of the Act shall be expended for construction of previously private schools controlled and managed by a tribal organization. Any unobligated funds will be retained until completion of the project and unexpended funds returned to the Bureau. Projects which are partially funded shall be given first consideration for the additional funding necessary to complete such projects.

Subpart C—General Contract Requirements

§ 274.31 Applicability.

This Subpart applies only when the applicant exercises the option of contracting with the Bureau to perform all or part of the construction work.

§ 274.32 Architectural design.

(a) Plans and specifications for a project shall comply with such Federal, State and local laws, ordinances and regulations pertaining to standards or construction and safety requirements as may be applicable.

(1) The contractor has the option of completing the planning documents itself or hiring a consultant or requesting Bureau assistance for that purpose.

(b) An Architect/Engineer shall be selected by the contractor subject to the advice and assistance of the Commissioner who shall counsel the contractor with respect to professional qualifications and performance history of firms so the best qualified firm for the work is selected. No Architect/Engineer agreement shall be entered into by the contractor until the Commissioner has reviewed the agreement and consented in writing to its provisions.

(c) Plans and specifications must conform to the project description, with approved revisions. Such plans and specifications must be forwarded for the approval of the Commissioner including schematic design, design development, and final construction document.

[40 FR 51310, Nov. 4, 1975, as amended at 43 FR 37446, Aug. 23, 1978]

§ 274.33 Facilities construction.

(a) The Commissioner may assist in preconstruction and construction activities to assure conformity with the requirements of the Act. Approval of all proposed preconstruction documents will be obtained from the Commissioner. Assistance prior to the preparation of these and similar documents will be provided, upon request, by the Commissioner or his representative. A preliminary conference may be suggested with the project architect and others if that seems desirable. The Commissioner will provide sufficient copies of all forms used to prepare the documents required for the project.

(b) The Commissioner will provide, upon request, technical supervision and services to the contractor in connection with the construction of school facilities. When appropriate, such services will provide assistance with periodic inspection of construction progress and determine the propriety of making partial payments as construction progresses.

§ 274.34 Selecting initial equipment.

Equipment procured with payments under this Part must be approved by the Commissioner before invitations for bids or requests for proposals as to the acquistion of such equipment are issued. In order to obtain such approval, a list of equipment to be procured (indicating quantities, costs, and specifications) shall be provided to the Commissioner for prior approval.

§ 274.35 Payment to contractors.

(a) At the request of a contractor, the Bureau contracting officer may make advance payments under contracts made under this Part. The requirements given in this section and in Chapter 2000 of the Treasury Fiscal Requirements Manual apply to making the advance payments.

(b) Any request for advance payment by a contractor shall specify the amount(s) required and the dates such advance(s) will be required and shall be supported by a schedule of estimated expenditures.

(c) An initial advance shall be limited to the amount of estimated expenditures for a period of time required to effect payment, based on experience in the locality. The initial advance shall be made in amounts and at times determined suitable to satisfy the minimum essential needs of the contractor.

(d) Later advances shall be made at times and in amounts determined necessary to insure availability of funds for timely payment of the contractor's obligations and to minimize the time between withdrawal from the Treasury and expenditure. Requests for advances after an initial advance shall be accompanied and supported by a report of expenditures to date and the amount of funds on hand.

§ 274.36 Use and transfer of Government property.

(a) The use of Government-owned facilities for tribal purposes may be authorized when not needed for Government activities. Transfer of title to such facilities may be arranged under the provisions of the Act of June 4, 1953 (67 Stat. 41), subject to the approval of the tribal government if property is located on a reservation.

(b) In carrying out a contract made under this Part, the Commissioner may, with the approval of the tribal government, permit a contractor to use existing buildings, facilities, and related equipment and other personal property owned by the Bureau within his jurisdiction under terms and conditions agreed upon for their use and maintenance. The property at the time of transfer must conform to the minimum standards established by the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

(c) Use of Government property is subject to the following conditions:

(1) When nonexpendable Government property is turned over to the tribal organization under a use permit, the permittee shall insure the property against damage by flood, fire, rain, windstorm, vandalism, snow and tornado in amounts and with companies satisfactory to the Federal officer in charge of the property. In case of damage or destruction of the property by flood, fire, rain, windstorm, vandalism, snow or tornado, the insurance money collected shall be expended

only for repair or replacement of the property. Otherwise, insurance proceeds shall be paid to the Bureau.

(2) If the tribal organization is self-insured and can present evidence of that fact to the Commissioner, insurance for lost or damaged property will not be required. However, the tribal organization will be responsible for replacement of such lost or damaged property at no cost to the Government or for paying the Government enough to replace the property.

(3) The permittee shall maintain the property in a reasonable state of repair consistent with the intended use and educational purposes.

(d) The contractor may have access to existing Bureau records needed to carry out a contract under this Part, as follows:

(1) The Bureau will make the records available subject to the provisions of the Freedom of Information Act (5 U.S.C. 522), as amended by the Act of November 21, 1974 (Pub. L. 93-502, 88 Stat. 1561).

(2) The contractors may have access to needed Bureau records at the appropriate Bureau office for review and making copies of selected records.

(3) If the contractor needs a small volume of identifiable Bureau records, the Bureau will furnish the copies to the contractor.

(4) Where a large volume of records are needed and copying is not practical or feasible, the records may be physically located at the contract site provided that a Bureau official is designated by the Commissioner or Area Director as custodian of the records.

§ 274.37 Wage and labor standards.

All laborers and mechanics employed by contractors or subcontractors in constructing, altering, or repairing buildings or other facilities in connection with contracts under this Part shall be paid wages not less than those on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended. However, this requirement does not apply where the contractor is the recognized governing body of the tribe and the construction, alteration or repair work is being performed by the tribal organization or the tribe with its own employees.

§ 274.38 Indian preference.

(a) Any contract made by the Bureau with a tribal organization shall provide that the contractor shall, to the greatest extent feasible, give preference in and opportunities for employment and training to Indians.

(b) Any contract made by the Bureau with a tribal organization shall provide that the contractor shall, to the greatest extent feasible, give preference in the award of subcontracts to Indian organizations and Indian owned economic enterprises.

(c) All subcontractors employed by the contractor shall, to the extent possible, give preference to Indians for employment and training and shall be required to include in their bid submission a plan to achieve maximum use of Indian personnel.

(d) In the performance of contracts under this Part 274 and subject to the provisions of Part 14H-70 of Title 41, a tribal governing body may develop its own Indian preference requirements that are not inconsistent with the purpose and intent of paragraph (a), (b), and (c) of this section.

§ 274.39 Liability and motor vehicle insurance.

(a) Tribal organizations shall obtain public liability insurance under contracts entered into with the Bureau under this Part. However, where the Bureau contracting officer determines that the risk of death, personal injury or property damage under the contract is small and that the time and cost of procuring the insurance is great in relation to the risk, the contract may be exempted from this requirement.

(b) Notwithstanding paragraph (a) of this section, any contract which requires or authorizes, either expressly or by implication, the use of motor vehicles must contain a provision requiring the tribal organization to provide liability insurance, regardless of how small the risk.

§ 274.40 Recordkeeping.

A contractor will be required to develop and maintain a recordkeeping system which will:

(a) Fully reflect all financial transactions involving the receipt and expenditure of funds provided under the contract in a manner which will provide accurate, current and complete disclosure of financial status; correlation with budget or allowable cost schedules; and clear audit facilitating data.

(b) Reflect the amounts and sources of funds other than Bureau contract funds which may be included in the construction project.

(c) Provide for the creation, maintenance and safeguarding of records of lasting value.

§ 274.41 Audit and inspection.

(a) During the term of a contract under this Part and for three years after the project or undertaking is completed, the Comptroller General and the Secretary, or any of their duly authorized representatives, shall have access for audit and examination purposes to any of the contractor's books, documents, papers, and records which, in their opinion, may be related or pertinent to the contract or any subcontract.

(b) The contractor will be responsible for maintaining all documents such as invoices, purchase orders, cancelled checks, balance sheets and all other records relating to financial transactions in a manner which will facilitate auditing. The contractor will be responsible for maintaining files of correspondence and other documents relating to the administration of the program under the contract properly separated from general records or cross-referenced to general files.

(c) The contractor receiving funds under this Part shall be primarily responsible for contract compliance.

(d) The records involved in any claim or expenditure that has been questioned shall be further maintained until final determination has been made on the questioned expenditure.

(e) All contracts, reports, budgets, budget estimates, plans, and other documents pertaining to administration of the contract shall be made available by the contractor. The contractor shall provide, free of charge, single copies of such documents upon request.

§ 274.42 Freedom of information.

(a) Unless otherwise required by law, the Bureau shall not place restrictions on contractors which will limit public access to the contractor's records except when records must remain confidential.

(b) A contractor under this Part shall make all reports and information concerning the contract available to the Indian people which the contractor serves or represents. Reports and information may be withheld from disclosure only when both of the following conditions exist:

(1) The reports and information fall within one of the following exempt catgories:

(i) Specifically required by statute or Executive Order to be kept secret.

(ii) Commercial or financial information obtained from a person or firm on a privileged or confidential basis.

(iii) Personnel, medical, and similar files where disclosure would be a clearly unwarranted invasion of personal privacy.

(iv) Geological and geophysical information and data concerning wells.

(2) Disclosure is prohibited by statute or Executive Order or sound grounds exist for using the exemption given in paragraph (b)(1) of this section.

(c) A request to inspect or copy reports and information shall be in writing and must reasonably describe the reports and information requested. The request may be delivered or mailed to the contractor. Within ten (10) working days after receiving the request, the contractor shall determine whether to grant or deny the request. The requester shall be notified immediately of the determination.

(d) The time limit for making a determination may be extended up to an additional ten (10) working days for good reason. The requester shall be notified in writing of the extension, reasons for the extension, and date on which the determination is expected to be made.

§ 274.43 Reporting.

(a) A contractor under this Part shall make a detailed report to the Commissioner after construction is completed. The report shall include, but not be limited to, an accounting of the amounts and purposes for which the contract funds were expended.

(b) The contractor shall furnish other contract-related reports when and as required by the Commissioner.

(c) A contractor under this Part shall send copies of the reports required by paragraphs (a) and (b) of this section to the tribal governing body(s) who requested the contract at the same time as the reports are sent to the Bureau.

§ 274.44 Repayment of funds.

Any funds paid under a contract entered into under this Part which are not expended, obligated or used for the purposes of the contract during its term shall be returned to the Bureau.

§ 274.45 Penalties.

If any officer, director, agent, or employee of, or connected with, any contractor or subcontractor under this Part embezzles, willfully misapplies, steals, or obtains by fraud any of the funds or property connected with the contract or subcontract, he shall be subject to the following penalties:

(a) If the amount involved does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) If the amount involved exceeds $100, he shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

§ 274.46 Applicable procurement regulations.

41 CFR Part 14H-70 provides the contract clauses which shall be included in contracts made with tribal organizations under this Part and places some requirements on them in addition to those given in this Subpart.

§ 274.47 Contract revision or amendment.

(a) Any contract made under this Part may be revised or amended as deemed necessary to carry out the purposes of the contract. No revision or amendment shall be made without the consent of the contractor. A contractor may make a written request for a revision or amendment of a contract to the Bureau contracting officer.

(b) If the contracting officer disapproves the proposed revision or amendment of the contract, he will notify the contractor in writing within 30 days after receiving the request. The notice shall state:

(1) The objections to the requested revision or amendment.

(2) The right of the contractor to appeal as provided in Subpart C of 43 CFR Part 4.

§ 274.48 Cancelling a contract for cause.

(a) Any contract entered into under this Part may be cancelled for cause when the contractor fails to perform the work called for under the contract.

(b) Before cancelling the contract, the Bureau will advise the contractor in writing of the following:

(1) The reasons why the Bureau is considering cancelling the contract.

(2) That the contractor will be given an opportunity to bring its work up to an acceptable level.

(3) That the Bureau may furnish technical advice and assistance to help overcome the deficiencies in the contract performance, when requested.

(c) If the contractor does not overcome the deficiencies in its contract performance, the Bureau will cancel the contract for cause. The Bureau will notify the contractor, in writing, of the cancellation. The notice shall give the reasons for the cancellation and the right of the contractor to appeal under Subpart C of 43 CFR Part 4.

(d) When a contract is cancelled for cause, the Bureau will either perform the work with its own forces or by another contract, as appropriate. However, when the contract is with other than the governing body of the Indian tribe, the advice of the tribe(s) will be obtained to determine how they wish the work to be performed.

§ 274.49 Privacy Act requirements.

(a) When a contractor operates a system of records to accomplish a Bureau function, the contractor shall

comply with Subpart D of 43 CFR Part 2 which implements the Privacy Act (5 U.S.C. 552a). Examples of the contractor's responsibilities are:

(1) To continue maintaining those systems of records declared by the Bureau to be subject to the Privacy Act as published in the FEDERAL REGISTER.

(2) To make such records available to individuals involved.

(3) To disclose an individual's record to third parties only after receiving permission from the individual to whom the record pertains. 43 CFR 2.56 lists exceptions to this procedure.

(4) To establish a procedure to account for access, disclosures, denials, and amendments to records.

(5) To provide safeguards for the protection of the records.

(b) The contractor may not:

(1) Discontinue or alter any established systems of records without prior approval of the appropriate Bureau systems manager.

(2) Deny requests for notification or access of records without prior approval of the appropriate Bureau systems manager.

Subpart D—Appeals

§ 274.51 Contract appeal.

A contractor may appeal an adverse decision or action of a Bureau contracting Officer regarding a contract under this Part as provided in Subpart C of 43 CFR Part 4.

§ 274.52 Appeal from decision to cancel contract for cause.

A contractor may appeal the decision of a Bureau official to cancel a contract under this Part for cause. The appeal shall be made as provided in Subpart C of 43 CFR Part 4.

§ 274.53 Other appeals.

Any decision or action taken by a Bureau official under this Part, other than those given in §§ 274.51 and 274.52 may be appealed only as provided in Part 2 of this chapter.

PART 275—STAFFING

Sec.
275.1 Purpose and scope.
275.2 Definitions.
275.3 Methods for staffing.
275.4 Implementing regulations.

AUTHORITY: Sec. 502, Pub. L. 91-648, 84 Stat. 1909, 1925 (42 U.S.C. 4762); Sec. 105, Pub. L. 93-638, 88 Stat. 2203, 2208-2210 (25 U.S.C. 450i); 26 U.S.C. 48.

SOURCE: 40 FR 51316, Nov. 4, 1975, unless otherwise noted.

§ 275.1 Purpose and scope.

The purpose of this Part is to outline methods available to tribes for utilizing the services of Bureau employees. These regulations are not intended to prevent an Indian tribe or tribal organization from staffing their programs by other methods they feel appropriate. However, when an Indian tribe or tribal organization decides to provide Bureau employees certain Federal benefits, Civil Service Commission regulations must be adhered to.

§ 275.2 Definitions.

As used in this Part:

(a) "Act" means the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, 88 Stat. 2203).

(b) "Area Director" means the official in charge of a Bureau of Indian Affairs Area Office.

(c) "Bureau" means the Bureau of Indian Affairs.

(d) "Commissioner," means the Commissioner of Indian Affairs, under the direction and supervision of the Assistant Secretary—Indian Affairs, who is responsible for the direction of the day-to-day operations of the Bureau of Indian Affairs.

(e) "Days" means calendar days.

(f) "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony, or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services

provided by the Secretary to Indians because of their status as Indians.

(g) "Indian" means a person who is a member of an Indian tribe.

(h) "Superintendent" means the official in charge of a Bureau of Indian Affairs Agency Office.

(i) "Tribal Chairman" means tribal chairman, governor, chief or other person recognized by the tribal government as its chief executive officer.

(j) "Tribal government" "tribal governing body," and "tribal council" means the recognized governing body of any Indian tribe.

(k) "Tribal organization" means the recognized governing body of any Indian tribe; or any legally established organization of Indians or tribes which is controlled, sanctioned, or chartered by such governing body or bodies or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

(l) "Assistant Secretary—Indian Affairs" means the Assistant Secretary—Indian Affairs who discharges the authority and responsibility of the Secretary for activities pertaining to Indians and Indian affairs.

[40 FR 51316, Nov. 4, 1975, as amended at 43 FR 37446, Aug. 23, 1978; 45 FR 13452, Feb. 29, 1980]

§ 275.3 Methods for staffing.

(a) An Indian tribal organization may use any of the following three methods to employ or obtain the services of Bureau employees:

(1) Agreement in accordance with the Intergovernmental Personnel Act of 1970 (5 U.S.C. 3371-3376). The agreement may be arranged between the tribal organization, the employee, and the Area Director or Commissioner. Assistance will be provided by the Area Personnel Office in complying with Civil Service instructions (Federal Personnel Manual Chapter 334) for completing an agreement.

(2) Employment of Bureau employees on or before December 31, 1985, when serving under an appointment not limited to one year or less. A mutual agreement will be made between a tribal organization and the employee before leaving Federal employment to retain coverage for any of the following Federal benefits:

(i) Compensation for work injuries.

(ii) Retirement.

(iii) Health insurance.

(iv) Life insurance.

(3) An agreement by an Indian tribe in accordance with the 1834 Act (25 U.S.C. 48) may be made in connection with contracts under section 102 of the Act.

(i) The agreement may provide for the tribal government to direct the day-to-day activities of Bureau employees. Tribal government direction of Bureau employees means the tribal chairman or other tribal official, as designated by the tribal governing body, is responsible for the planning, coordination, and completion of the daily on-the-job assignments of Bureau employees. The daily assignments of each such Bureau employee are limited to those that fall within the general range of duties prescribed in the employee's Bureau position.

(ii) The agreement to direct day-to-day activities of Bureau employees shall include all employees:

(A) whose positions are in the program or portion of the program to be contracted; or

(B) in a portion of the program to continue under Bureau operation in connection with a contract for other portions of the program.

(iii) The proposed agreement will be worked out between the tribe, the Superintendent, and the Area Director and forwarded to the Commissioner for final approval.

(b) When a contract application under Part 271 of this chapter does not include a proposed agreement for direction of Bureau employees, the application must be submitted at least 120 days in advance of the proposed effective date of the contract to allow time for placement of affected employees.

[40 FR 51316, Nov. 4, 1975, as amended at 41 FR 5098, Feb. 4, 1976]

§ 275.4 Implementing regulations.

Regulations to implement section 105 of the Act will be issued by the Civil Service Commission. The regulations will cover the situations de-

scribed in paragraphs (a)(1) and (a)(2) of § 275.3.

PART 276—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS

Sec.
276.1 Purpose and scope.
276.2 Definitions.
276.3 Cash depositories.
276.4 Bondings and insurance.
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276.8 Financial reporting requirements.
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276.13 Indian Preference in grant administration.
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APPENDIX A—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO GRANTS
APPENDIX B—FINANCIAL REPORTING REQUIREMENTS.

AUTHORITY: 34 CFR 256; Sec. 104, Pub. L. 93-638, 88 Stat. 2203, 2207 (25 U.S.C. 450h).

SOURCE: 40 FR 51316, Nov. 4, 1975, unless otherwise noted.

§ 276.1 Purpose and scope.

(a) The purpose of the regulations in this Part is to give the uniform administrative requirements for grants awarded by the Bureau of Indian Affairs.

(b) The regulations in this Part shall apply to all grants awarded by the Bureau of Indian Affairs unless the Part which gives the application process and special requirements for the specific type of grant states otherwise.

§ 276.2 Definitions.

As used in this part:

(a) "Advance by Treasury check" means a payment made by a Treasury check to a grantee upon its request or through the use of predetermined payment schedules before payments are made by the grantee.

(b) "Date of completion" means the date when all work under a grant is completed or the date in the grant award document, or any supplement or amendment thereto, on which Federal assistance ends.

(c) "Disallowed costs" means those charges to a grant which the Bureau or its representative determines to be unallowable.

(d) "Economic enterprise" means any commercial, industrial, agricultural or business activity that is at least 51 percent Indian owned, established or organized for the purpose of profit.

(e) "Excess property" means property under the control of the Bureau which, as determined by the Commissioner, is no longer required for its needs.

(f) "Expendable personal property" means all tangible personal property other than nonexpendable property.

(g) "Grant closeout" means the process by which the Bureau determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the Bureau.

(h) "Grantee" means the entity which is responsible for administration of the grant.

(i) "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(j) "Letter of credit" means an instrument certified by an authorized official of the Bureau which authorizes a grantee to draw funds when needed from the Treasury, through a Regional Disbursing Office, in accordance with the provisions of Treasury Circular No. 1075 as modified and supplemented by a memorandum of understanding between the Bureau of Government Financial Operation, Department of the Treasury and the Department of the Interior.

(k) "Nonexpendable personal property" means tangible personal property having useful life of more than one year and an acquisition cost of $300 or

more per unit. A grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above.

(l) "Personal property" means property of any kind except real property. It may be tangible—having physical existence, or intangible—having no physical existence, such as patents, inventions, and copyrights.

(m) "Real property" means land, land improvements, structures and appurtenances thereto, excluding removable personal property, machinery and equipment.

(n) "Reimbursement by Treasury check" means a payment made to a grantee with a Treasury check upon request for reimbursement from the grantee.

(o) "Suspension of a grant" means an action by the Bureau which temporarily suspends assistance under the grant pending corrective action by the grantee or pending decision to terminate the grant by the Bureau.

(p) "Termination of a grant" means the cancellation of Federal assistance, in whole or in part, under a grant at any time prior to the date of completion.

(q) "Tribal government", "tribal governing body" and "tribal council" means the recognized governing body of an Indian tribe.

(r) "Tribal organization" means the recognized governing body of any Indian tribe or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or bodies of which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

§ 276.3 Cash depositories.

(a) Except for situations described in paragraphs (b) and (c) of this section, the Bureau will not:

(1) Require physical segregation of cash depositories for Bureau grant funds provided to a grantee.

(2) Establish any eligibility requirements for cash depositories in which Bureau grant funds are deposited by grantees or their subgrantees.

(b) A separate bank account shall be used when payments under letter of credit are made on a "check-paid" basis in accordance with agreements entered into by a grantee, the Bureau, and the banking institutions involved. A check-paid basis letter of credit is one under which funds are not drawn from the Treasury until the grantee's checks have been presented to its bank for payment.

(c) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees are encouraged to use minority banks.

§ 276.4 Bondings and insurance.

In administering Bureau grants, grantees shall observe their regular requirements and practices with respect to bonding and insurance. The Bureau will not impose additional bonding and insurance requirements, including fidelity bonds, except as provided in paragraphs (a) and (b) of this section.

(a) The recipient of a Bureau grant which requires contracting for construction or facility improvement (including any Bureau grant which provides for alterations or renovations of real property) shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds except for contracts exceeding $100,000. For contracts exceeding $100,000, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

(3) A payment bond on the part of the contractor for 100 per cent of the contract price. A payment bond is one

executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(b) Where, in connection with a Bureau grant, the Bureau also guarantees the payment of money borrowed by the grantee, the Bureau may at its discretion require adequate bonding and insurance if the bonding and insurance requirements of the grantee are not deemed to be sufficient to protect adequately the interests of the Federal Government.

§ 276.5 Recordkeeping.

(a) The Bureau shall not impose record retention requirements over and above those established by the grantee except that financial records, supporting documents, statistical records, and all other records pertinent to a Bureau grant, or to any subgrant (or negotiated contract exceeding $2500) under a grant, shall be retained for a period of three years, with the following qualifications:

(1) The records shall be retained beyond the three-year period if audit findings have not been resolved.

(2) Records for nonexpendable property which was acquired with Bureau grant funds shall be retained for three years after its final disposition.

(3) When grant records are transferred to or maintained by the Bureau, the three-year retention requirement is not applicable to the grantee.

(b) The retention period starts from the date of submission of the final expenditure report or, for grants which are renewed annually, from the date of the submission of the annual expenditure report.

(c) Grantees are authorized, if they desire, to substitute microfilm copies in lieu of original records.

(d) The Bureau shall request transfer of certain records to its custody from grantees when it determines that the records possess long-term retention value. However, in order to avoid duplicate recordkeeping the Bureau may make arrangements with the grantee for the grantee to retain any records which are continuously needed for joint use.

(e) The Secretary of the Interior and the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the grantees and their subgrantees which are pertinent to a specific grant program for the purpose of making audit, examination, excerpts, transcripts and copies at government expense.

(f) Unless otherwise required by law, the Bureau shall not place restrictions on grantees which will limit public access to the grantee's records created as part of the grant except when records must remain confidential. Following are some of the reasons for withholding records:

(1) Prevent a clearly unwarranted invasion of personal privacy;

(2) Specifically required by statute or Executive Order to be kept secret;

(3) Commercial or financial information obtained from a person or firm on a privileged or confidential basis.

§ 276.6 Program income.

(a) No grantee receiving a grant shall be held accountable for interest earned on grant funds, pending their disbursement for program purposes.

(b) Proceeds from the sale of real or personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with § 276.11.

(c) Royalties received from copyrights and patents produced under the grant during the grant period shall be retained by the grantee and, in accordance with the grant agreement, be either added to the funds already committed to the program or deducted from total allowable project costs for the purpose of determining the net costs on which the Bureau share of costs will be based. After termination or completion of the grant, the Bureau share of royalties in excess of $200 received annually shall be returned to the Bureau in the absence of other specific agreements between the Bureau and the grantee. The Bureau share of royalties shall be computed on the same ratio basis as the Bureau share of the total project cost.

(d) All other program income earned during the grant period shall be retained by the grantee and, in accordance with the grant agreement, shall be either:

(1) Added to funds committed to the project by the Bureau and the grantee and be used to further eligible program objectives, or

(2) Deducted from the total project costs for the purpose of determining the net costs on which the Bureau share of costs will be based.

(e) Grantees shall record the receipt and expenditures of revenues (such as taxes, special assessments, levies, fines, etc.) as a part of grant project transactions when such revenues are specifically earmarked for a grant project in accordance with grant agreements.

§ 276.7 Standards for grantee financial management systems.

(a) Grantee financial management systems for grants and subgrantee financial management systems for subgrants shall provide for:

(1) Accurate, current, and complete disclosure of the financial results of each grant program in accordance with Federal reporting requirements and for each subgrant in accordance with the grantees' requirements. Except when specifically required by law, the Bureau wll not require financial reporting on the accrual basis from tribal organizations whose records are not maintained on that basis. However, when accrual reporting is required by law, tribal organizations whose records are not maintained on that basis will not be required to convert their accounting systems to the accrual basis; they may develop the accrual information through an analysis of the documentation on hand or on the basis of best estimates.

(2) Records which identify adequately the source and application of funds for grant—or subgrant—supported activities. These records shall contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(3) Effective control over and accountability for all grant or subgrant funds, and real and personal property acquired with grant or subgrant funds. Grantees and subgrantees shall adequately safeguard all such property and shall assure that it is used solely for authorized purposes.

(4) Comparison of actual with budgeted amounts for each grant or subgrant, and, when specifically required by the performance reporting requirements of the grant or subgrant, relation of financial information with performance or productivity data, including the production of unit cost information.

(5) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee, whenever funds are advanced by the Federal Government. When advances are made by a letter-of-credit method, the grantees shall make drawdowns from the U.S. Treasury as close as possible to the time of making the disbursements. Subgrantees shall institute similar procedures when funds are advanced by the grantee.

(6) Procedures for determining the allowability and allocability of costs shall be in accordance with the applicable cost principles prescribed in Appendix A of this Part.

(7) Accounting records which are supported by source documentation.

(8) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(b) Grantees shall require subgrantees (recipients of grants which are passed through by the grantee) to adopt all of the standards in paragraph (a) of this section.

§ 276.8 Financial reporting requirements.

Requirements for grantees to report financial information to the Bureau, and to request advances and reimbursment when a letter of credit method is not used, are prescribed in Appendix B of this Part.

§ 276.9 Monitoring and reporting program performances.

(a) Grantees shall constantly monitor the performance under grant-supported activities to assure that adequate progress is being made toward achieving the goals of the grant. This review shall be made for each program, function, or activity of each

grant as set forth in the approved grant application.

(b) Grantees shall submit a performance report for each grant which briefly presents the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the goals established for the period. Where the output of grant programs can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons for slippage in those cases were established goals were not met.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(c) Grantees shall submit the performance reports to the Bureau with the Financial Status Reports (prescribed in Appendix B of this Part) in the frequency established by Appendix B. The Bureau shall prescribe the frequency with which the performance reports will be submitted with the Request for Advance or Reimbursement (prescribed in Appendix B) when that form is used in lieu of the Financial Status Report. In no case shall the performance reports be required more frequently than quarterly or less frequently than annually.

(d) Between the required performance reporting dates, events may occur which have significant impact upon the project or program. In such cases, the grantee shall inform the Bureau as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accomplished by a statement of the action taken, or contemplated, and any Bureau assistance needed to resolve the situation.

(2) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

(e) If any performance review conducted by the grantee discloses the need for change in the budget estimates in accordance with the criteria established in § 276.14, the grantee shall submit a request for budget revision.

(f) The bureau shall make site visits as frequently as practicable to:

(1) Review program accomplishments and management control systems.

(2) Provide such technical assistance as may be required, or requested.

§ 276.10 Grant payment requirements.

(a) Except for construction grants for which the letter-of-credit method is optional, the letter-of-credit funding method shall be used by the Bureau where all of the following conditions exist:

(1) When there is or will be a continuing relationship between a grantee and the Bureau for at least a 12-month period and the total amount of advances to be received within that period from the Bureau is $120,000, or more, as prescribed by Treasury Circular No. 1075.

(2) When the grantee has established or demonstrated to the Bureau the willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds and their disbursement by the grantee.

(3) When the grantee's financial management system meets the standards for fund control and accountability prescribed in § 276.7.

(b) The method of advancing funds by Treasury check shall be used, in accordance with the provisions of Treasury Circular No. 1075, when the grantee meets all of the requirements specified in paragraphs (a) (2) and (3) of this section.

(c) The reimbursement by Treasury check method shall be the preferred method when the grantee does not meet the requirements specified in either paragraph (a)(2) or (a)(3), or both. This method may also be used when the major portion of the program is accomplished through private market financing or Federal loans, and when the Bureau grant assistance con-

stitutes a minor portion of the program.

(d) Unless otherwise required by law, the Bureau shall not withhold payments for proper charges made by grantees at any time during the grant period unless:

(1) A grantee has failed to comply with the program objectives, grant award conditions, or Bureau reporting requirements; or

(2) The grantee is indebted to the United States and collection of the indebtedness will not impair accomplishment of the objectives of any grant program sponsored by the United States. Under such conditions, the Bureau may, upon reasonable notice, inform the grantee that payments will not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(e) Appendix B of this part provides the procedures for requesting advances or reimbursements.

[40 FR 51316, Nov. 4, 1975, as amended at 41 FR 5099, Feb. 4, 1976]

§ 276.11 Property management standards.

(a) Grantees may follow their own property management policies and procedures if they observe the requirements of this section. With respect to property covered by this section, the Bureau may not impose on grantees any requirements (including property reporting requirements)—not authorized by this Part unless specifically required by Federal law.

(b) Title to real property to be acquired in whole or in part from a Bureau grant under Part 272 of this Chapter shall vest in one of the following manners:

(1) Title may be taken by the United States in trust for the Indian tribe upon the request of the tribe and when the real property to be acquired is within the reservation boundaries or adjoins on at least two sides other trust or restricted lands as prescribed in Part 272 of this chapter.

(2) Fee title to the acquired real property shall vest in the Indian tribe whenever the acquisition does not meet the criteria in paragraph (b)(1) of this section, unless for other reasons a tribe requests title to be taken in the name of the United States. In the absence of applicable statutory authority governing the disposition of real property acquired by a tribe, the tribe shall use the real property for the authorized purposes and in accordance with any other requirements imposed by the terms and conditions of the original grant. Changes in use compatible to other tribal programs may be authorized by the Bureau. When no longer needed for the authorized purposes, the real property shall be used in accordance with the standards set forth in § 276.11(d) (1) for non-expendable personal property. Accordingly, the following priority order for use of such property shall be:

(i) Other grants from the Bureau.

(ii) Grants from other Federal agencies.

(iii) Tribal purposes consistent with those authorized for support by Bureau grants.

(iv) Tribal official activities.

(3) In those instances where the Indian tribe requests, title may be acquired by the United States. Use of these acquired real property interests will be subject to the authorized purposes and in accordance with the provisions of the original grant. Upon a determination that the real property is no longer needed for the authorized purposes, disposition may be made by declaring it excess under provisions of the Act of January 2, 1975 (88 Stat. 1954) and title transferred to the Secretary to be held by the United States in trust for the tribe. Where real property does not meet the requirements under the Act of January 2, 1975 (88 Stat. 1954), the tribe may elect to acquire title under applicable enabling statutory authorities, or in the absence of statutory authority, request withholding disposition in aid of legislation, or authorize disposal under the General Services Administration procedures.

(c) The provisions of paragraph (b) (2) and (3) of this section shall also apply when real property is acquired in whole or in part by a Bureau grant other than that provided under Part 272 of this Chapter. However, when such property is acquired by a grantee

other than an Indian tribe, or a tribal governing body, fee simple title to the property shall vest in the grantee upon acquisition. In the absence of applicable statutory provisions governing the use or disposition of such property, it shall be subject to the following requirments, in addition to any other requirements imposed by the terms and conditions of the grant:

(1) The grantee shall use the real property for the authorized purpose of the original grant as long as needed.

(2) The grantee shall obtain approval by the Bureau for the use of the real property in other projects when the grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs, or programs that have purposes consistent with those authorized for support by the grantor.

(3) When the real property is no longer needed as provided in paragraphs (c) (1) and (2) of this section, the grantee shall return all real property furnished or purchased wholly with Bureau grant funds to the control of the Bureau. In the case of property purchased in part with Bureau grant funds, the grantee may be permitted to take title to the Federal interest therein upon compensating the Federal Government for its fair share of the property. The Federal share of the property shall be the amount computed by applying the percentage of the Federal participation in the total cost of the grant program for which the property was acquired to the current fair market value of the property.

(d) Standards and procedures governing ownership, use, and disposition of nonexpendable personal property furnished by the Bureau or acquired with Bureau funds are set forth below:

(1) *Nonexpendable personal property acquired with Bureau funds.* When nonexpendable personal property is acquired by a grantee wholly or in part with Bureau funds, title will not be taken by the Bureau except as provided in paragraph (d)(1)(iv) of this section but shall be vested in the grantee subject to the following restrictions on use and disposition of the property:

(i) The grantee shall retain the property acquired with Bureau funds in the grant program as long as there is a need for the property to accomplish the purpose of the grant program whether or not the program continues to be supported by Bureau funds. When there is no longer a need for the property to accomplish the purpose of the grant program, the grantee shall use the property in connection with the other Federal grants it has received in the following order of priority:

(A) Other grants from the Bureau needing the property.

(B) Grants of other Federal agencies needing the property.

(ii) When the grantee no longer has need for the property in any of its Federal grant programs, or programs that have purposes consistent with those authorized for support by the grantor, the property may be used for its own official activities in accordance with the following standards:

(A) Nonexpendable property with an acquisition cost of less than $500 and used four years or more. The grantee may use the property for its own official activities without reimbursement to the Federal government or sell the property and retain the proceeds.

(B) All other nonexpendable property. The grantee may retain the property for its own use if a fair compensation is made to the Bureau for the latter's share of the property. The amount of compensation shall be computed by applying the percentage of Bureau participation in the grant program to the current fair market value of the property.

(iii) If the grantee has no need for the property, disposition of the property shall be made as follows:

(A) Nonexpendable property with an acquisition cost of $1,000 or less. Except for that property which meets the criteria of paragraph (d)(1)(ii)(A) of this section, the grantee shall sell the property and reimburse the Bureau an amount which is computed in accordance with paragraph (d)(1)(iii) of this section.

(B) Nonexpendable property with an acquisition cost of over $1,000. The grantee shall request disposition instructions from the Bureau. The

Bureau shall determine whether the property can be used to meet the Bureau's requirement. If no requirement exists within the Bureau, the availability of the property shall be reported to the General Services Administration (GSA) by the Bureau to determine whether a requirement for the property exists in other Federal agencies. The Bureau shall issue instructions to the grantee within 120 days and the following procedures shall govern:

(*1*) If the grantee is instructed to ship the property elsewhere, the grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the grantee's participation in the grant program to the current fair market value of the property, plus any shipping or interim storage costs incurred.

(*2*) If the grantee is instructed to otherwise dispose of the property, he shall be reimbursed by the Bureau of such costs incurred in its disposition.

(*3*) If disposition instructions are not issued within 120 days after reporting, the grantee shall sell the property and reimburse the Bureau and amount which is computed by applying the percentage of Bureau participation in the grant program to the sales proceeds. Further, the grantee shall be permitted to retain $100 or 10 percent of the proceeds, whichever is greater, for the grantee's selling and handling expenses.

(iv) Where the Bureau determines that property with an acquisition cost of $1,000 or more and financed solely with Bureau funds is unique, different, or costly to replace, it may reserve title to such property, subject to the following provisions:

(A) The property shall be appropriately identified in the grant agreement or otherwise made known to the grantee.

(B) The Bureau shall issue disposition instructions within 120 days after the completion of the need for the property under the grant for which it was acquired. If the Bureau fails to issue disposition instructions within 120 days, the grantee shall apply the standards of paragraphs (d)(1)(i), (d)(1)(ii)(B), and (d)(1)(iii)(B) of this section.

(2) Federally owned nonexpendable personal property. Unless statutory authority to transfer title has been granted to an agency, title to Federally owned property (property to which the Federal Government retains title including excess property made available by the Bureau to grantees) remains vested by law in the Federal Government. Upon termination of the grant or need for the property, such property shall be reported to the Bureau for further Bureau use or, if appropriate, for reporting to the General Services Administration for other Federal agency use. Appropriate disposition instructions will be issued to the grantee after completion of Bureau review.

(e) The grantee's property management standards for nonexpendable personal property shall also include the following procedural requirements:

(1) Property records shall be maintained accurately and provide for a description of the property; manufacturer's serial number or other identification number; acquisition date and cost; source of the property; percentage of Federal funds used in the purchase of property; location, use, and condition of the property; and ultimate disposition data including sales price or the method used to determine current fair market value if the grantee reimburses the bureau for its share.

(2) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current use, and continued need for the property.

(3) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented.

(4) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(5) Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

(f) When the total inventory value of any unused expendable personal

property exceeds $500 at the expiration of need for any grant purposes, the grantee may retain the property or sell the property as long as he compensates the Bureau for its share in the cost. The amount of compensation shall be computed in accordance with paragraph (d)(1)(ii)(B) of this section.

(g) Specific standards for control of intangible property are provided as follows:

(1) If any program produces patentable items, patent rights, processes, or inventions, in the course of work aided by a Bureau grant, such fact shall be promptly and fully reported to the Bureau. Unless there is prior agreement between the grantee and Bureau on disposition of such items, the Bureau shall determine whether protection on such invention or discovery shall be sought and how the rights in the invention or discovery—including rights under any patent issued on it—shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's memorandum for heads of executive departments and agencies) dated August 23, 1971, and Statement of Government Patent Policy as printed in 36 FR 16889.

(2) Where the grant results in a book or other copyrightable material, the author or grantee is eligible to copyright the work if it is found that (i) the retention of the copyright is not precluded by statute and (ii) equity or the public interest is best served by doing so, by reason of special circumstances. If it is found that the public interest is best served by limiting the term of any copyright to be obtained, such limits shall be set forth in the grant agreement. "Developmental" copyrights may be requested during the development, testing, or evaluation of copyrightable materials in order to prevent them from prematurely falling into the public domain. The copyright will be in accordance with copyright laws. However, the Government shall receive a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes. A copy of any copyright obtained by a grantee shall be provided to the Bureau. Program income received as royalties from copyrights on materials produced under grants is retained by the grantee during the grant period and is to be used according to the provisions of § 276.6(c). Specific agreements between the Bureau and the grantee shall be entered into before the grant is awarded to determine the uses of the royalty income after the grant is completed or terminated.

(h) The use of Bureau-owned facilities under the jurisdiction of the Commissioner by a grantee for purposes of carrying out a grant may be authorized when the facilities are not needed for Bureau purposes.

[40 FR 51316, Nov. 4, 1975, as amended at 43 FR 37446, Aug. 23, 1978]

§ 276.12 Procurement standards.

(a) The standards contained in this section do not relieve the grantee of the contractual responsibilities arising under its contracts. The grantee is the responsible authority, without recourse to the Bureau regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into, in support of a grant. This includes but is not limited to: disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of law are to be referred to the tribal, Federal or other authority which has proper jurisdiction.

(b) Grantees may use their own procurement regulations provided that procurements made with Bureau grant funds adhere to the standards set forth as follows:

(1) The grantee shall maintain a code or standards of conduct which shall govern the performance of its officers, employees, or agents in contracting with and expending Bureau grant funds. Grantee's officers, employees or agents, shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. To the extent permissible by law, rules or regulations, such standards shall provide for penalties, sanctions, or other disciplinary actions to be applied for violations of such standards by either the

grantee officers, employees, or agents, or by contractors or their agents.

(2) All procurement transactions regardless of whether negotiated or advertised and without regard to dollar value shall be conducted in a manner so as to provide maximum open and free competition. The grantee should be alert to organizational conflicts of interest or non-competitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade. However, this provision will apply only after the Indian preference requirements prescribed in § 276.13 have been met.

(3) The grantee shall establish procurement procedures which provide for, as a minimum, the following procedural requirements:

(i) Proposed procurement actions shall be reviewed by grantee official to avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(ii) Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. In competitive procurements, such description shall not contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. When so used, the specific features of the named brand which must be met by offerors should be clearly specified.

(iii) Positive efforts shall be made by the grantees to use small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts to be performed using Bureau grant funds. However, this provision will apply only after the Indian preference requirements prescribed in § 276.13 have been met.

(iv) The type of procuring instruments used (i.e., fixed price contracts, cost reimbursable contracts, etc.) shall be appropriate for the particular procurement and for promoting the best interest of the grant program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(v) Formal advertising, with adequate purchase description, sealed bids, and public openings shall be the required method of procurement unless negotiation pursuant to paragraph (b)(3)(vi) of this section is necessary to accomplish sound procurement. However, procurement of $10,000 or less need not be so advertised. Where such advertised bids are obtained the awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the grantee, price and other factors considered. (Factors such as discounts, transportation costs, taxes may be considered in determining the lowest bid.) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the grantee. Any or all bids may be rejected when it is in the grantee's interest to do so.

(vi) Procurements may be negotiated if it is impractical and unfeasible to use formal advertising. Generally, procurements may be negotiated by the grantee if:

(A) The public exigency will not permit the delay incident to advertising;

(B) The material or service to be procured is available from only one person or firm; (all contemplated sole source procurements where the aggregate expenditure is expected to exceed $5,000 shall be referred to the Bureau for prior approval).

(C) The total amount involved does not exceed $10,000;

(D) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institutions;

(E) No acceptable bids have been received after formal advertising;

(F) The purchases are for highly perishable materials or medical supplies; for material or services where the prices are established by law; for technical items or equipment requiring standardization and interchangeability of parts with existing equipment; for experimental, developmental

or research work; for supplies purchased for authorized resale; and for technical or specialized supplies requiring substantial initial investment for manufacture;

(G) Otherwise authorized by law, rules or regulations. Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

(vii) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources.

(viii) Procurement records or files for purchases in amounts over $10,000 shall provide at least the following pertinent information: Justification for the use of negotiation in lieu of advertising, contractor selection, and the basis for the cost or price negotiation.

(ix) A system for contract administration shall be maintained to assure contractor conformance with terms, conditions, and specifications of the contract or order, and to assure adequate and timely followup of all purchases.

(c) In addition to provisions to define a sound and complete agreement, the grantee shall include the following provisions in all contracts and subgrants:

(1) Contracts shall contain such contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

(2) All contracts, amounts for which are over $10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions where the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) In all contracts for construction or facility improvement awarded over $100,000, grantees shall observe the bonding requirements provided in § 276.4.

(4) All construction contracts awarded by recipients and their contractors or subgrantees having a value of more than $10,000, shall contain a provision requiring compliance with Executive Order No. 11246, entitled "Equal Employment Opportunity," as amended by Labor Regulations (41 CFR Part 60). However, this Equal Employment Opportunity provision will apply only after the Indian preference requirements prescribed in § 276.13 have been met.

(5) All contracts and subgrants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The grantee shall report all suspected or reported violations to the Bureau.

(6) When required by the Federal grant program legislation, all construction contracts awarded by grantees and subgrantees over $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination.

The grantee shall report all suspected or reported violations to the Bureau.

(7) Where applicable, all contracts awarded by grantees and subgrantees over $2,000 for construction contracts and over $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard workday or workweek is permissible if the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked over 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act applies to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(8) Contracts or agreements, the principal purpose of which is to create, develop, or improve products, processes or methods; or for exploration into fields which directly concern public health, safety, or welfare; or constraints in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions, and materials generated under the contract or agreement are subject to the regulations issued by the Bureau. The contractor shall be advised as to the source of additional information regarding these matters.

(9) All negotiated contracts (except those of $10,000 or less) awarded by grantees shall include a provision to the effect that the grantee, the Bureau, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts, and transcriptions.

(10) Contracts and subgrants of amounts over $100,000 shall contain a provision which requires the recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1251 et seq.) as amended. Violations shall be reported to the Bureau and the Regional Office of the Environmental Protection Agency.

§ 276.13 Indian preference in grant administration.

Any grant or subgrant shall require that to the greatest extent feasible:

(a) Preferences and opportunities for training and employment in connection with the administration of such a grant or subgrant shall be given to Indians.

(b) Preference in the award of a subgrant, contract or subcontract in connection with administration of a grant shall be given to Indian organizations and economic enterprises.

(c) A tribal governing body may develop its own Indian preference requirements to the extent that such requirements are not inconsistent with the purpose and intent of paragraphs (a) and (b) of this section for grants executed under this Part.

§ 276.14 Budget revision.

Criteria and procedures to be followed by grantees in reporting deviations from grant budgets and requesting approval for budget revisions are as follows:

(a) For nonconstruction grants, grantees shall request prior approvals promptly from the Bureau for budget revisions whenever:

(1) The revision results from changes in the scope or the objective of the grant-supported program.

(2) The revision indicates the need for additional Bureau funding.

(3) The grant budget is over $100,000 and the cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed $10,000, or five percent of the grant budget, whichever is greater. The same criteria apply to cumulative amount of transfers among programs, functions, and activities when budgeted separately for a grant, except that the Bureau shall permit no transfer which would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended.

(4) The grant budget is $100,000, or less, and the cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed five percent of the grant budget. The same criteria apply to the cumulative amount of transfers among programs, functions, and activities when budgeted separately for a grant, except that the Bureau shall permit no transfer which would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended.

(5) The revisions involve the transfer of amounts budgeted for indirect costs to absorb increases in direct costs.

(6) The revisions pertain to the addition of items requiring approval in accordance with the provisions of Appendix A of this Part.

(b) All other changes to nonconstruction grant budgets, except for the changes described in paragraph (d) of this section do not require approval. These changes include (1) the use of grantee funds in furtherance of program objectives over and above the grantee minimum share included in the approved grant budget and (2) the transfer of amounts budgeted for direct costs to absorb authorized increases in indirect costs.

(c) For construction grants, grantees shall request prior approval promptly from the Bureau for budget revisions whenever:

(1) The revision results from changes in the scope or the objective of the grant-supported programs.

(2) The revision increases the budgeted amounts of Bureau funds needed to complete the project.

(d) When the Bureau awards a grant which provides support for both construction and nonconstruction work, the Bureau may require, in the grant agreement, the grantee to request prior approval before making any fund or budget transfers between the two types of work supported.

(e) For both construction and nonconstruction grants, the Bureau shall require tribal grantees to notify the Bureau promptly whenever the amount of Bureau authorized funds is expected to exceed the needs of the grantee by more than $5,000 or 5 percent of the Bureau grant, whichever is greater. This notification will not be required when applications for additional funding are submitted for continuing grants.

(f) When requesting approval for budget revisions, grantees shall use the budget forms which were used in the grant application. However, grantees may request by letter the approvals required by the provisions of Appendix A of this Part.

(g) Within 30 days from the date of receipt of the request for budget revisions, the Bureau shall review the request and notify the grantee whether or not the budget revisions have been approved. If the Bureau does not reach a decision prior to the end of the 30-day period or should the grantee not be notified of the Bureau's decision by the end of the 30-day period the grantee may appeal directly to the Commissioner.

§ 276.15 Grant closeout.

(a) In closing out Bureau grants, the following shall be observed:

(1) Upon request, the Bureau shall make prompt payments to a grantee for allowable reimbursable costs under the grant being closed out.

(2) The grantee shall immediately refund to the Bureau any unencumbered balance of cash advanced to the grantee.

(3) The Bureau shall obtain from the grantee within 90 days after the

date of completion of the grant all financial, peformance, and other reports required as a condition of the grant. The Bureau may grant extensions when requested by the grantee.

(4) The Bureau shall make a settlement for any upward or downward adjustments to the Federal share of costs after these reports are received.

(5) The grantee shall account for any property acquired with grant funds, or received from the Government in accordance with the provisions of § 276.11.

(6) If a final audit has not been performed before the closeout of the grant, the Bureau shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

(b) Suspension. When a grantee has materially failed to comply with the terms and conditions of a grant, the Bureau may after reasonable notice to the grantee, suspend the grant. The notice preceding suspension shall include the effective date of the suspension, the reasons for the suspension, the corrective measures necessary for reinstatement of the grant, and, if there is no immediate threat to safety, a reasonable time frame for corrective action prior to actual suspension. No obligations incurred by the grantee during the period of suspension shall be allowable under the suspended grant, except that the Bureau may at its discretion allow necessary and proper costs which the grantee could not reasonably avoid during the period of suspensions if such costs would otherwise be allowable under the applicable cost principles specified in Appendix A of this part. Appropriate adjustments to the payments under the suspended grant will be made, either by withholding the payments or by not allowing the grantee credit for disbursements which he may make in liquidation of unauthorized obligations he incurs during the period of suspension. Suspensions shall remain in effect until the grantee has taken corrective action to the satisfaction of the Bureau or given assurances satisfactory to the Bureau that corrective action will be taken, or until the Bureau cancels the grant.

(c)(1) Cancellation for cause. The Bureau may cancel any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has:

(i) Materially failed to comply with the terms and conditions of the grant;

(ii) Violated the rights or endangered the health, safety, or welfare of any persons;

(iii) Been grossly negligent in or has mismanaged the handling or use of funds provided under the grant.

(2) When it appears that cancellation of a grant shall become necessary, the Bureau shall promptly notify the grantee in writing of this possibility. This written notice shall advise the grantee of the reason for the possible cancellation and the corrective action necessary to avoid cancellation. The Bureau shall also offer, and provide if requested by the grantee, any technical assistance which may be required to effect the corrective action. The grantee shall have 60 days in which to effect this corrective action before the Bureau provides notice of intent to cancel the grant as provided in paragraph (c)(3) of this section.

(3) Upon deciding to cancel for cause, the Bureau shall promptly notify the grantee in writing of that decision, the reasons for the cancellation, and the effective date. The Bureau shall also provide a hearing for the grantee before cancellation, as provided in § 272.51. However, the Bureau may immediately cancel the grant, upon notice to the grantee, if the Bureau determines that continuance of the grant poses an immediate threat to safety. In this event, the Bureau shall provide a hearing for the grantee within ten (10) days of cancellation.

(4) Payments made to grantees or recoveries by the Bureau under grants cancelled for cause shall be in accordance with the legal rights and obligations of the parties.

(d)(1) Cancellation on other grounds. Except as provided in paragraph (c) of this section, grants may be cancelled in whole or in part only as follows:

(i) By the Bureau with the consent of the grantee, in which case the two parties shall agree upon the cancella-

tion conditions, including the effective date, and in the case of partial cancellation, the portion to be cancelled; or

(ii) By the grantee, upon written notice to the Bureau, setting forth the reasons for the cancellation, the effective date, and, in the case of partial cancellation, the portion to be cancelled.

(2) When a grant is cancelled in accordance with paragraph (d) of this section, the grantee shall not incur new obligations for the cancelled portion after the effective date, and shall cancel as many outstanding obligations as possible. The Bureau shall allow full credit to the grantee for the Bureau share of the noncancellable obligations properly incurred by the grantee before cancellation.

[40 FR 51316, Nov. 4, 1975, as amended at 45 FR 13452, Feb. 29, 1980]

§ 276.16 Subgrants and subcontracts to non-profit organizations.

The uniform administrative requirements in this part, including the cost principles in Appendix A, to this part, are applicable to all subgrants or subcontracts made by a grantee in accordance with the provisions of this chapter. However, these requirements and cost principles are applicable as minimum standards for subgrants or subcontracts made to nonprofit organizations. Accordingly, the grantee may prescribe additional or more stringent requirements with regard to subgrants or subcontracts made to non-profit organizations.

§ 276.17 Printing.

As permitted by paragraph 36-2(c) in the Government Printing and Binding Regulations (October 1974, No. 23), published by the Joint Committee on Printing (JCP), printing required by a grantee in performing work under a grant is considered "incidental printing" (e.g., material which the grantee needs to use to respond to the terms of the grant). Whenever the incidental printing is likely to exceed the exclusions in paragraphs 36-3 and 36-4 of the Joint Committee on Printing (JCP) Printing and Binding Regulations, specific provisions on printing as may be required shall be included in the grant agreement. Grantees shall be given the option of using sources other than the Government Printing Office for incidental printing.

[43 FR 37446, Aug. 23, 1978]

Appendix A—Principles for Determining Costs Applicable to Grants

Part I—General

A. *Purpose and scope.* 1. *Objectives.* This attachment sets forth principles for determining the allowable costs of programs administered by grantees under grants from the Bureau. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Bureau and tribal participation in the financing of a particular grant. They are designed to provide that Bureau assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

2. *Policy guides.* The application of these principles is based on the fundamental premises that:

a. Grantees are responsible for the efficient and effective administration of grant programs through the application of sound management practices.

b. The grantee assumes the responsibility for seeing that Bureau assisted program funds have been expended and accounted for consistent with underlying agreements and program objectives.

c. Each grantee organization, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration.

3. *Application.* These principles will be applied by the Bureau in determining costs incurred by grantees under Bureau grants (including subgrants, contracts by grantees and subcontracts).

B. *Definitions.* 1. *Approval or authorization of the Bureau* means documentation evidencing consent prior to incurring specific cost.

2. *Cost allocation plan* means the documentation identifying, accumulating, and distrtibuting allowable costs under grants and contracts together with the allocation methods used.

3. *Cost,* as used herein, means cost as determined on a cash, accrual, or other basis acceptable to the Bureau as a discharge of the grantee's accountability for Bureau funds.

4. *Cost objective* means a pool, center, or area established for the accumulation of

cost. Such areas include organizational units, functions, objects or items of expense as well as ultimate cost objectives including specific grants, projects, contracts, and other activities.

5. *Federal agency* means any department, agency, commission, or instrumentality in the executive branch of the Federal Government which makes grants to grantees.

6. *Grant* means an agreement between the Bureau and a grantee whereby the Bureau provides funds or aid in kind to carry out specified programs, services, or activities. The principles and policies stated in this Appendix as applicable to grants in general also apply to any Federally sponsored cost reimbursement type of agreement performed by a grantee, including contracts, subcontracts and subgrants.

7. *Grant program* means those activities and operations of the grantee which are necessary to carry out the purposes of the grant, including any portion of the program financed by the grantee.

8. *Grantee* means the entity which is responsible for administration of the grant.

9. *Services*, as used herein, means goods and facilities, as well as services.

10. *Supporting services* means auxiliary functions necessary to sustain the direct effort involved in administering a grant program or an activity providing service to the grant program. These services may be centralized in the grantee department or in some other agency, and include procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service, and the like.

C. *Basic guidelines.* 1. *Factors affecting allowability of costs.* To be allowable under a grant program, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient administration of the grant program, be allocable thereto under these principles, and, except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of a grantee.

b. Be authorized or not prohibited under applicable laws or regulations.

c. Conform to any limitations or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items.

d. Be consistent with policies, regulations, and procedures that apply uniformly to both Federally assisted and other activities of which the grantee is a part.

e. Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

f. Not be allocable to or included as a cost of any other Federally financed program in either the current or a prior period.

g. Be net of all applicable credits.

2. *Allocable costs.* a. A cost is allocable to a particular cost objective to the extent of benefits received by such objective.

b. Any cost allocable to a particular grant or cost objective under the principles provided for in this Appendix may not be shifted to other Federal grant programs to overcome funds deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

c. Where an allocation of joint cost will ultimately result in charges to a grant program, an allocation plan will be required as prescribed in Section I.

3. *Applicable credits.* a. Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to grants as direct or indirect costs. Examples of such transactions are: purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

b. Applicable credits may also arise when Bureau funds are received or are available from sources other than the grant program involved to finance operations or capital items of the grantee. This includes costs arising from the use of depreciation of items donated or financed by the Bureau to fulfill matching requirements under another grant program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given grant.

D. *Composition of cost.* 1. *Total cost.* The total cost of a grant program is comprised of allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs, less applicable credits.

2. *Classification of costs.* There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the grant or other ultimate cost objective. It is essential, therefore, that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under grant programs are provided in the sections which follow.

E. *Direct costs.* 1. *General.* Direct costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to grants, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the other ultimate cost objective.

2. *Application.* Typical direct costs chargeable to grant programs are:

a. Compensation of employees for the time and effort devoted specifically to the execution of grant programs.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of the grant.

c. Equipment and other approved capital expenditures.

d. Other items of expense incurred specifically to carry out the grant agreement.

e. Services furnished specifically for the grant program by other agencies, provided such charges are consistent with critria outlined in Section G of these principles.

F. *Indirect costs.* 1. *General.* Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities, to the grantee department. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect cost within a grantee department or in other agencies providing services to a grantee department. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration or relative benefits derived.

2. *Grantee departmental indirect costs.* All grantee departmental indirect costs, including the various levels of supervision, are eligible for allocation to grant programs provided they meet the conditions set forth in this Part. In lieu of determining the actual amount of grantee departmental indirect cost allocable to a grant program, the following methods may be used:

a. *Predetermined fixed rates for indirect costs.* A predetermined fixed rate for computing indirect costs applicable to a grant may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the contracting parties to reach an informed judgment (1) as to the probable level of indirect costs in the grantee department during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect cost.

b. *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a grantee department's indirect services cannot be readily determined as in the case of small, self-contained or isolated activity. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses of the grantee department before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

3. *Limitation on indirect costs.* a. Bureau grants may be subject to laws that limit the amount of indirect costs that may be allowed. In this event, the Bureau will establish procedures which will assure that the amount actually allowed for indirect costs under each such grant does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under this Appendix, whichever is the smaller.

b. When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under this Appendix the amount not recoverable as indirect costs under a grant may not be shifted to another Federally sponsored grant program or contract.

G. *Cost incurred by organizations other than the grantee.* 1. *General.* The cost of service provided by other organizations may only include allowable direct costs of the service plus a prorata share of allowable supporting costs and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of an organization and his staff assistants not directly involved in operations. However, supervision by the head of an organization whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying organizations.

2. *Alternative methods of determining indirect cost.* In lieu of determining actual indirect cost related to a particular service furnished by another organization, either of the following alternative methods may be used provided only one method is used for a specific service during the fiscal year involved.

a. *Standard indirect rate.* An amount equal to ten percent of direct labor cost in providing the service performed by another organization (excluding overtime, shift, or holiday premiums and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

b. *Predetermined fixed rate.* A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in Section F.2.a.

H. *Cost incurred by grantee for others.* 1. *General.* The principles provided in Section G will also be used in determining the cost of services provided by the grantee to another agency.

I. *Cost allocation plan.* 1. *General.* A plan for allocation of costs will be required to support the distribution of any joint costs related to the grant program. All costs included in the plan will be supported by formal accounting records which will substantiate the propriety of eventual charges.

2. *Requirements.* The allocation plan of the grantee should cover all joint costs of the grantees as well as costs to be allocated under plans of other agencies or organizational units which are to be included in the costs of federally sponsored programs. The cost allocation plans of all the agencies rendering services to the grantee, to the extent feasible, should be presented in a single document. The allocation plan should contain, but not neessarily be limited to, the following:

a. The nature and extent of services provided and their relevance to the Federally sponsored programs.

b. The items of expense to be included.

c. The methods to be used in distributing cost.

3. *Instructions for preparation of cost allocation plans.* The Bureau, in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by grantees in preparation of cost allocation plans.

4. *Submission of indirect cost proposal and negotiation of indirect cost rates.*

a. A grantee should submit its indirect cost proposal to the Federal agency which provides the largest dollar volume of contracts and grants. However, once a Federal agency has handled an indirect cost proposal, that same Federal agency should continue to act upon the proposal even though the preponderance of financial interest may have shifted to another Federal agency, and grantee shall not resubmit its indirect cost proposal to a second Federal agency.

b. Where the grantee submits its proposal to the Department of Interior, the proposal should be sent by the Bureau of Indian Affairs to the cognizant Regional Office of the Department's Office of Audit and Investigation. The Office of Audit and Investigation is responsible for the audit and review of the proposals and negotiation of the indirect cost rates.

c. Grant administrators officers will usually, but are not required to, accept indirect cost rates negotiated by other Federal agencies.

d. The Bureau of Indian Affairs will provide technical assistance in developing indirect cost proposals, if needed.

Part II—Standards for Selected Items of Cost

A. *Purpose and applicability.* 1. *Objective.* This attachment provides standards for determining the allowability of selected items of cost.

2. *Application.* These standards will apply irrespective of whether a particular item of cost is treated as direct or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable, rather determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles stated in Part I of this Appendix.

B. *Allowable costs.* 1. *Accounting.* The cost of establishing and maintaining accounting and other information systems required for the management of grant programs is allowable. This includes cost incurred by central service agencies for these purposes. The cost of maintaining central accounting records required for overall tribal government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

2. *Advertising.* Advertising media includes newspapers, magazines, radio and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

a. Recruitment of personnel required for the grant program.

b. Solicitation of bids for the procurement of goods and services required.

c. Disposal of scrap or surplus materials acquired in the performance of the grant agreement.

d. Other purposes specifically provided for in the grant agreement.

3. *Advisory councils.* Costs incurred by grantee advisory councils or committees established pursuant to Bureau requirements to carry out grant programs are allowable. The cost of like organizations is allowable when provided for in the grant agreement.

4. *Audit service.* The cost of audits necessary for the administration and management of functions related to grant programs is allowable.

5. *Bonding.* Costs of premiums on bonds covering employees who handle grantee funds are allowable.

6. *Budgeting.* Costs incurred for the development, preparation, presentation, and execution of budgets are allowable. Costs for services of a central budget office are generally not allowable since these are costs of general government. However, where employees of the central budget office activity participate in the grantee budget process, the cost of identifiable services is allowable.

7. *Building lease management.* The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

8. *Central stores.* The cost of maintaining and operating a central store's organization for supplies, equipment, and materials used either directly or indirectly for grant programs is allowable.

9. *Communications.* Communication costs incurred for telephone calls or service, telegraph, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service and similar expenses are allowable.

10. *Compensation for personal services.* a. *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under the grant agreement, including but not necessarily limited to wages, salaries, and supplementary compensation and benefits. The costs of such compensation are allowable to the extent that total compensation for individual employees: (1) Is responsible for the services rendered, (2) follows an appointment made in accordance with tribal government ordinances and rules and which meets Federal merit system or other requirements, where applicable; and (3) is determined and supported as provided in b., below. Compensation for employees engaged in federally assisted actvities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the tribal government. In cases where the kinds of employees required for the federally assisted activities are not found in the other activities of the tribal government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

b. *Payroll and distribution of time.* Amounts charged to grant programs for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with generally accepted practice of the tribal government. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one grant program or other cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort.

11. *Depreciation and use allowance.* a. Grantees may be compensated for the use of their own buildings, capital improvements, and equipment through use allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

b. The computation of depreciation or use allowance will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost or any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal Government through charges to Federal grant programs or otherwise, irrespective of whether title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of land. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by the grantor Federal agency.

c. Where the depreciation method is followed, adequate property records must be maintained, and any generally accepted method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected Federally sponsored programs and must result in equitable charges considering the extent of the use of the assets for benefit of such programs.

d. In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment.

e. No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated, provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to utilization of the facility or item for the purpose contemplated.

12. *Disbursing service.* The cost of disbursing grant program funds by the Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

13. *Employee fringe benefits.* Costs identified under a. and b. below are allowable to the extent that total compensation for employees is reasonable as defined in Section B.10.

a. Employee benefits in the form of regular compensation paid to employees during

periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are: (1) Provided pursuant to an approved leave system, and (2) the cost thereof is equitably allocated to all related activities, including grant programs.

b. Employee benefits in the form of employers' contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workmen's compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to grant programs and in other activities.

14. *Employee morale, health and welfare costs.* The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred, are allowable. Income generated from any of these activities will be offset against expenses.

15. *Exhibits.* Costs of exhibits relating specifically to the grant programs are allowable.

16. *Legal expenses.* The cost of legal expenses required in the administration of grant programs is allowable. Legal services furnished by the chief legal officer of a tribal government or his staff solely for the purpose of discharging his general responsibilities as legal officer are unallowable. Legal expenses for the prosecution of claims against the Federal Government are unallowable.

17. *Maintenance and repair.* Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

18. *Materials and supplies.* The cost of materials and supplies necessary to carry out the grant programs is allowable. Purchases made specifically for the grant program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the grantee. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

19. *Memberships, subscriptions and professional activities.* a. *Memberships.* The cost of membership in civic, business, technical and professional organizations is allowable provided: (1) The benefit from the membership is related to the grant program, (2) the expenditure is for agency membership, (3) the cost of the membership is reasonably related to the value of the services or benefits received, and (4) the expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

b. *Reference material.* The cost of books, and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the grant program.

c. *Meetings and conferences.* Costs are allowable when the purpose of the meeting is the dissemination of technical information relating to the grant program and they are consistent with regular practices followed for other activities of the grantee.

20. *Motor pools.* The costs of a service organization which provides automobiles to grantees at a mileage or fixed rate and/or provides vehicle maintenance, inspection and repair services are allowable.

21. *Payroll preparation.* The cost of preparing payrolls and maintaining necessary related wage records is allowable.

22. *Personnel administration.* Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for grant programs, are allowable.

23. *Printing and reproduction.* Cost for printing and reproduction services necessary for grant administration, including but not limited to forms, reports, manuals, and informational literature, are allowable. Publication costs of reports or other media relating to grant program accomplishments or results are allowable when provided for in the grant agreement.

24. *Procurement service.* The cost of procurement service, including solicitation of bids, preparation and award of contracts, and all phases of contract administration in providing goods, facilities and services for grant programs, is allowable.

25. *Taxes.* In general, taxes or payments in lieu of taxes which the grantee is legally required to pay are allowable.

26. *Training and education.* The cost of in-service training, customarily provided for employee development which directly or indirectly benefits grant programs is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by the Bureau.

27. *Transportation.* Costs incurred for freight, cartage, express, postage and other transportation costs relating either to goods purchased, delivered, or moved from one location to another are allowable.

28. *Travel.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to a grant program. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consist-

ent with those normally allowed in like circumstances in non-Federally sponsored activities. The difference in cost between first-class air accommodations and less-than-first-class air accommodations is unallowable except when less-than-first-class air accommodations are not reasonably available.

C. *Costs allowable with approval of the Bureau.* 1. *Automatic data processing.* The cost of data processing services to grant programs is allowable. This cost may include rental of equipment or depreciation on grantee-owned equipment. The acquisition of equipment, whether by outright purchase, rental-purchase agreement or other method of purchase, is allowable only upon specific prior approval of the Bureau as provided under the selected item for capital expenditures. The Bureau must obtain required Departmental clearances before such approval can be given.

2. *Building space and related facilities.* The cost of space in privately or publicly owned buildings used for the benefit of the grant program is allowable subject to the conditions stated below. The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately owned building in the same locality. The cost of space procured for grant program usage may not be charged to the program for periods of nonoccupancy, without authorization of the Bureau.

a. *Rental cost.* The rental cost of space in a privately owned building is allowable.

b. *Maintenance and operation.* The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

c. *Rearrangements and alterations.* Cost incurred for rearrangement and alteration of facilities required specifically for the grant program or those that materially increase the value or useful life of the facilities (Section C.3.) are allowable when specifically approved by the Bureau.

d. *Depreciation and use allowances on publicly owned buildings.* These costs are allowable as provided in Section B.11.

e. *Occupancy of space under rental-purchase or a lease with option-to-purchase agreement.* The cost of space procured under such arrangements is allowable when specifically approved by the Bureau.

3. *Capital expenditures.* The cost of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets is allowable when such procurement is specifically approved by the Bureau. When assets acquired with Bureau grant funds are (a) sold, (b) no longer available for use in a Federally sponsored program or (c) used for purposes not authorized by the Bureau, the Bureau's equity in the asset will be refunded in the same proportion as Bureau participation in its cost. In case any assets are traded on new items, only the net cost of the newly acquired assets is allowable.

4. *Insurance and indemnification.* a. Costs of insurance required, or approved and maintained pursuant to the grant agreement, is allowable.

b. Costs of other insurance in connection with the general conduct of activities is allowable subject to the following limitations:

(1) Types and extent and cost of coverage will be in accordance with sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property is unallowable except to the extent that the Bureau has specifically required or approved such costs.

c. Contributions to a reserve for a self-insurance program approved by the Bureau are allowable to the extent that the type of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the grant agreement. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations, are available.

e. *Indemnification* includes securing the grantee against liabilities to third persons and other losses not compensated by insurance or otherwise. The Bureau is obligated to indemnify the grantee only to the extent expressly provided for in the grant agreement, except as provided in d. above.

5. *Management studies.* The cost of management studies to improve the effectiveness and efficiency of grant management for ongoing programs is allowable except that the cost of studies performed by agencies other than the grantee or outside consultants is allowable only when authorized by the Bureau.

6. *Preagreement costs.* Costs incurred prior to the effective date of the grant, whether or not they would have been allowable thereunder if incurred after such date, are allowable when specifically provided for in the grant agreement.

7. *Professional services.* Cost of professional services rendered by individuals or organizations not a part of the grantee is allowable subject to such prior authorization as may be required by the Bureau.

8. *Proposal costs.* Costs of preparing proposals on potential Federal Government grant agreements are allowable when specifically provided for in the grant agreement.

9. *Tribal government officer salaries and expenses.* Identifiable salary and expense costs incurred as a direct result of a tribal government officer's service to a grant program provided under this chapter are allowable subject to advance agreement with an approval by the Bureau. A general limitation in this regard is prescribed in section D.6.

D. *Unallowable costs.* 1. *Bad debts.* Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable.

2. *Contingencies.* Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

3. *Contributions and donations.* Unallowable.

4. *Entertainments.* Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities, are unallowable.

5. *Fines and penalties.* Costs resulting from violations of, or failure to comply with Federal, State and local laws and regulations are unallowable.

6. *Tribal officer salaries and expenses.* The salaries and expenses of tribal government officers are considered a cost of general tribal government and are unallowable except as prescribed in Section C.9.

7. *Interest and other financial costs.* Interest on borrowing (however requested), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by Federal legislation.

8. *Underrecovery of costs under grant agreements.* Any excess of cost over the Federal contribution under one grant agreement is unallowable under other grant agreements.

Appendix B—Financial Reporting Requirements

A. *Purpose and scope.* This appendix prescribes requirements for grantee to report financial information to the Bureau and to request advances and reimbursement when a letter-of-credit method is not used.

B. *Definitions.* 1. *Accrued expenditures.* Accrued expenditures are the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employes, contractors, subgrantees, and other payees; and (3) amounts becoming owed under programs for which no current services or performed are required.

2. *Accrued income.* Accrued income is the earnings during a given period which is a source of funds resulting from: (1) Services performed by the grantee; (2) goods and other tangible property delivered to purchasers; and (3) amounts becoming owed to the grantee for which no current services or performance are required by the grantee.

3. *Disbursements.* Disbursements are payments in cash or by check.

4. *Bureau funds authorized.* Funds authorized represent the total amount of the Bureau funds authorized for obligations and establish the ceilings for obligation of Bureau funds. This amount may include any authorized carryover of unobligated funds from prior fiscal years.

5. *Obligations.* Obligations are the amounts of orders placed, contracts and grants awarded, services received, and similar transactions during a given period, which will require payment during the same or a future period.

6. *Outlays.* Outlays represent charges made to the grant project or program. Outlays can be reported on a cash or accrued expenditure basis.

7. *Program income.* Program income represents earnings by the grantee realized from the grant-supported activities. Such earnings exclude interest income and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, sale of assets purchased with grant funds, and royalties on patents and copy-rights. Program income can be reported on a cash or accrued income basis.

8. *Unobligated balance.* The unobligated balance is the portion of the funds authorized by the Bureau which has not been obligated by the grantee and is determined by deducting the cumulative obligations from the funds authorized.

9. *Unpaid obligations.* Unpaid obligations represent the amout of obligations incurred by the grantee which have not been paid.

C. *Stardard forms.* 1. Only the following forms will be authorized for obtaining financial information from grantees for grant programs:

a. *Financial Status Report.* (1) The Bureau shall require grantees to use a standard Financial Status Report to report the status of funds for all nonconstruction grant programs. The Bureau may, however, have the option of not requiring a Federal Status Report when a request for advance or reimbursement (paragraph 2a) is determined to provide adequate information to meet their needs, except that a final Financial Status Report shall be required at the completion of the grant when the Request for Advance or Reimbursement form is used only for advances.

(2) The Bureau shall prescribe whether the report shall be on a cash or accrual basis. If the Bureau requires accrual information and the grantee's accouting records are not normally kept on the accrual basis, the grantee should develop such information through an analysis of the documentation on hand or on the basis of best estimates.

(3) The grant agreement shall determine the frequency of the Financial Status Report for each grant program considering the size and complexity of the particular program. However, the report shall not be required more frequently than quarterly or less frequently than annually. Also, a final report shall be required at the completion of the grant.

(4) The original and two copies of the Financial Status Report shall be submitted 30 days after the end of each specified reporting period. In addition, final reports shall be submitted 90 days after the end of the grant period or the completion of the project or program. Extensions to reporting due dates may be approved when requested by the grantee.

b. *Report of federal cash transactions.* (1) When funds are advanced to grantees through letters of credit or with Treasury checks, each grantee shall submit a report of Federal Cash Transactions. The Bureau shall use this report to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant or project from the grantees.

(2) The grant agreement may require forecasts of Federal cash requirement in the Remarks section of the report.

(3) When practical and deemed necessary, the Bureau may require grantees to report in the Remarks section the amount of cash in excess of three days' requirements in the hands of subgrantees or other secondary recipients and to provide short narrative explanations of actions taken by the grantees to reduce the excess balances.

(4) The Bureau shall accept the identical information from the grantees in a machine-usable format in lieu of the Report of Federal Cash Transactions.

(5) Grantees shall submit the original and two copies of the Report of Federal Cash Transactions no later than 15 working days following the end of each quarter. For those grantees receiving annual grants totaling one million dollars or more, the Bureau shall require a monthly report.

(6) The Bureau shall waive the requirement for submission of a Report of Federal Cash Transactions when monthly advances do not exceed $10,000 per grantee provided that such advances are monitored through other forms contained in this Appendix or the grantee's accounting controls are adequate to minimize excessive Federal advances.

2. Except as noted below, only the following forms will be authorized for the grantees in requesting advances and reimbursements.

a. *Request for advance or reimbursement.* (1) The "Request for Advance or Reimbursement" form is the standard form for all nonconstruction grant programs when letters of credit or predetermined automatic advance methods are not used. The Bureau, however, has the option of using this form for construction programs in lieu of an "Outlay Report and Request for Reimbursement for Construction Programs" (paragraph 2b) and shall specify in the grant agreement.

(2) Grantees shall be authorized to submit requests for advances or reimbursement at least monthly when letters of credit are not used. Grantees shall submit the original and two copies of a Request for Advance or Reimbursement.

b. *Outlay Report and Request for Reimbursement for Construction Program.* (1) The "Outlay Report and Request for Reimbursement for Construction Programs" form is the standard format to be used for requesting reimbursement for construction programs. The Bureau may, however, have the option of substituting a "Request for Advance or Reimbursement" form (paragraph 2a) in lieu of this form when the Bureau determines that the former provides adequate information to meet its needs as stated in the grant agreement.

(2) Grantees shall be authorized to submit requests for reimbursement at least monthly when letters of credit are not used. Grantees shall submit the original and two copies of an "Outlay Report and Request for Reimbursement for Construction Programs" form.

3. When the Bureau needs additional information in using these forms, the following shall be observed:

a. When necessary to comply with future legislative requirements, the Bureau shall issue instructions to require grantees to submit such information under the Remarks section of the reports.

b. When necessary to meet specific program needs, the Bureau shall submit the proposed reporting requirements to the General Services Administration for approval under the exception provision of this Appendix.

c. The Bureau, in obtaining information as in paragraphs a and b above, must also comply with report clearance requirements of the Office of Management and Budget Circular No. A-40, as revised.

[40 FR 51316, Nov. 4, 1975, as amended at 41 FR 5099, Feb. 4, 1976; 43 FR 37447, Aug. 23, 1978]

PART 277—SCHOOL CONSTRUCTION CONTRACTS FOR PUBLIC SCHOOLS

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AUTHORITY: Sec. 207, Pub. L. 93-638; 88 Stat. 2216 (25 U.S.C. 458c(b)).

SOURCE: 40 FR 51327, Nov. 4, 1975, unless otherwise noted.

Subpart A—General Provisions

§ 277.1 Purpose.

The purpose of the regulations in this Part is to give the application and approval process for a School District to obtain school construction contracts from the Bureau under Section 204 of Title II of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, 88 Stat. 2203), to assist in the education of Indians.

[40 FR 51327, Nov. 4, 1975, as amended at 43 FR 37447, Aug. 23, 1978]

§ 277.2 Scope.

(a) The application process for public school construction contracts under section 204 of Pub. L. 93-638 is given in 20 U.S.C. 631-645 and 45 CFR 114. The application process is administered by and is the responsibility of the Commissioner of Education. Upon receipt of an application, the Commissioner of Education notifies the Commissioner of Indian Affairs. The Commissioner of Education prepares and furnishes the national priority index to the Bureau at the start of each fiscal year or when the Bureau so requests.

(b) The Bureau requests and receives funding for acquisition of sites and for planning, architectural-engineering design, facilities construction and equipment for the program. Funds are allocated to projects by the Bureau on the basis of funding priorities as established by the Commissioner of Education. For each project for which funds are allocated, the Bureau and the Office of Education shall jointly develop an individual project management plan and shall provide guidance to the applicant in developing educational and facilities specifications. A Bureau contracting officer, designated by the Commissioner of Indian Affairs, shall negotiate one or more contracts with the applicant, in accordance with the approved management program, for the acquisition of sites and for the planning, design, construction, and purchase of equipment to provide educational facilities. Construction standards and space requirements shall be based on need as described in prepared educa-

tional and facilities specification documents.

[43 FR 37447, Aug. 23, 1978]

§ 277.3 Definitions.

As used in this Part:

(a) "Bureau" mean the Bureau of Indian Affairs.

(b) "Commissioner of Education" means the United States Commissioner of Education, Department of Health, Education, and Welfare.

(c) "Commissioner" means the Commissioner of Indian Affairs, under the direction and supervision of the Assistant Secretary—Indian Affairs, who is responsible for the direction of day-to-day operations of the Bureau of Indian Affairs, Department of the Interior.

(d) "Contractor" means an applicant who has been awarded a contract under this Part.

(e) "Days" means calendar days.

(f) "Economic enterprise" means any commercial, industrial, agricultural, or business activity that is at least 51 percent Indian owned, established or organized for the purpose of profit.

(g) "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony, or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(h) "Indian" means a person who is a member of an Indian tribe.

(i) "P.L. 81-815" means the Act of September 23, 1950 (P.L. 81-815, 72 Stat. 548), as amended.

(j) "P.L. 93-638" means the Indian Self-Determination and Education Assistance Act (P.L. 93-638, 88 Stat. 2203).

(k) "School district" or "local education agency" means that subdivision of the State which contains the public elementary and secondary educational institutions providing educational services and is controlled by a duly elected board, commission or similarly constituted assembly.

(l) "Secretary" means the Secretary of the Interior.

(m) "State" means a State of the United States of America or any political subdivision of a State.

(n) "State education agency" means the State Board of Education or other agency or office primarily responsible for supervision by the State of public elementary and secondary schools or, if there is no such office or agency, an office or agency designated by the Governor or by State law.

(o) "Tribal government", "tribal governing body" and "tribal council" means the recognized governing body of an Indian tribe.

(p) "Assistant Secretary—Indian Affairs" means the Assistant Secretary—Indian Affairs who discharges the authority and responsibility of the Secretary for activities pertaining to Indians and Indian affairs.

[40 FR 51327, Nov. 4, 1975, as amended at 45 FR 13452, Feb. 29, 1980]

§ 277.4 Revision or amendment of regulations.

In order to make any substantive revisions or amendments to regulations in this Part, the Secretary shall take the following actions:

(a) Consult with Indian tribes and national and regional Indian organizations to the extent practicable about the need for revision or amendment and consider their views in preparing the proposed revision or amendment.

(b) Publish any proposed revisions or amendments in the FEDERAL REGISTER as proposed rulemaking to provide adequate notice to, and receive comments from, all interested parties.

(c) After consideration of all comments received, publish the regulations in the FEDERAL REGISTER in final form not less than 30 days before the date they are made effective.

(d) Annually consult with Indian tribes and national and regional Indian organizations about the need for revision or amendment, and consider their views in preparing the revision or amendment.

(e) Nothing in this section shall preclude Indian tribes or national or regional Indian organizations from initiating request for revisions or amend-

ments subject to paragraphs (a), (b) and (c) of this section.

Subpart B—Application Process

§ 277.11 Eligible applicants.

(a) Any school district may apply for a contract with the Bureau to assist the agency or district in acquiring sites for, or in constructing, acquiring, or renovating, facilities (including all necessary equipment) in school districts on or adjacent to or in close proximity to any Indian reservation or other lands held in trust by the United States for Indians.

(b) The project for which the applicant is requesting funding must meet the eligibility requirements under subsections (a) and (b) of section 14 of Pub. L. 81-815.

§ 277.12 Consultation with Indians

(a) Except where there is a majority of Indians on an elected public school board, the Commissioner of Indian Affairs shall consult with the local Indian Education Committee and the tribal governing body(s) of the local Indian tribe(s) affected on each project which the Bureau is committed to fund under Pub. L. 93-638 for that fiscal year and at the time the commitment is made. Tribal members on an elected public school board or the local Indian Education Committee may advise the tribal governing body(s) of the local Indian tribe(s) affected by providing a written declaration of intent to apply and to provide progress reports of the contract application process.

(b) The school district applying for a contract under this part is encouraged to consult with the local Indian Education Committee and the tribal governing body(s) of the local Indian tribe(s) affected before the application is submitted to the Commissioner of Education. This consultation will be met when the official tribal governing body(s) of the Indian tribe(s) to be benefited by the application notify the Commissioner of Education. The notification that the tribe(s) approves or disapproves the application will be made in writing, within 60 days after the date of the consultation. The notice of disapproval must give specific stated objections to the application. A copy of the notice shall be delivered or mailed to the Commissioner of Indian Affairs at the same time as the notice is delivered or mailed to the Commissioner of Education.

(c) After being notified that the tribe(s) disapproved a proposed application, the Commissioner of Indian Affairs or his designated representative shall meet with tribal, public school officials and the Indian Education Committee to provide assistance in resolving the stated objections to the application. The Commissioner of Indian Affairs shall notify the Commissioner of Education 15 days in advance of the date, place, and time of such meetings and shall invite the Commissioner of Education or his representative to attend.

[40 FR 51327, Nov. 4, 1975, as amended at 41 FR 5099, Feb. 4, 1976; 43 FR 37447, Aug. 23, 1978]

§ 277.13 Application procedure for placement on priority list.

(a) Applications for pulbic school construction assistance under this Part will be submitted and processed in accordance with procedures outlined in 20 U.S.C. 631-645 and 45 CFR 114. Application forms, instructions, advice, and assistance in accordance with 20 U.S.C. 636 and 45 CFR 114 may be obtained from each State education agency. All questions pertaining to the preparation and filing of preapplications, applications, and request for materials should be directed to the State Representative for School Assistance, who will respond or may forward the inquiries, where appropriate, to the Commissioner of Education. Upon receipt of an application, the Commissioner of Education shall so notify the Commissioner of Indian Affairs. The Commissioner of Indian Affairs shall in turn notify the tribal governing body(s) of the local Indian tribe(s) affected of the application for public school construction assistance under this part.

(b) Section 204(b) of Pub. L. 93-638 assigns responsibility for the application processing, determination of eligibility and establishment of project priority to the Commissioner of Education. Such application, review and de-

termination processes will include field and site review by the Commissioner of Education to determine a tentative cost estimate for budget purposes. The Commissioner of Education will conduct the on-site inspection to determine which buildings need to be retained, demolished or remodeled. For budget purposes, initial information will be gathered to provide a tentative cost estimate for planning, design, construction, and equipment, as well as to insure that the quality and standard of education will be equal to that of all other students in the school(s).

(c) [Reserved]

(d) The projects will be ranked by priority based on criteria established by the Commissioner of Education as given in 45 CFR 114.16.

[40 FR 51327, Nov. 4, 1975, as amended at 41 FR 5099, Feb. 4, 1976; 43 FR 37447, Aug. 23, 1978]

§ 277.14 Submitting priority list to Bureau.

Pursuant to section 204(b) of Pub. L. 93-638, a list of public school projects eligible for funding under this part shall be submitted to the Commissioner of Indian Affairs by the Commissioner of Education at the beginning of each fiscal year or when so requested by the Bureau. The Commissioner of Indian Affairs shall notify the tribal governing body(s) by the local Indian tribe(s) affected by the application for public school construction assistance under this Part. The Commissioner of Education shall also inform the Commissioner of Indian Affairs of the amount of funds available under subsection 14(a) or 14(b) of Pub. L. 81-815 for public school construction under this Part.

[43 FR 37448, Aug. 23, 1978]

§ 277.15 Preparing a commitment-to-fund list.

(a) When the Assistant Secretary for Indian Affairs receives the priority list from the Commissioner of Education, the Commissioner for Indian Affairs shall:

(1) Conduct the Indian consultation when required by § 277.12.

(2) Determine whether the quality and standard of education (including facilities and auxiliary services) for Indian students enrolled in the school are at least equal to that provided all other students from resources, other than resources provided under this Part, which are available to the local school district. A project shall not be placed on the commitment-to-fund list if the Commissioner of Indian Affairs or his representative has determined that the quality and standard of education for Indian students enrolled in the schools will not be equal to that of all other students in the school(s).

(3) Place the project highest on the priority list received from the Commissioner of Education at the top of a commitment-to-fund list. Projects will be added to the commitment-to-fund list in the same order as they are on the priority list. Each project will be added to the commitment-to-fund list as long as the total of the tentative cost estimates is less than the total of the amount of funds available under subsection 14(a) or 14(b) of Pub. L. 81-815 for public school construction plus the amount of funds appropriated for public school construction under Pub. L. 93-638 for the new fiscal year.

(b) Each applicant will be notified in writing by the Commissioner of Indian Affairs within 15 days from the date the project is added to the commitment-to-fund list.

[43 FR 37448, Aug. 23, 1978]

§ 277.15a Contracts for planning documents.

(a) For each project added to the commitment-to-fund list, the Commissioner of Indian Affairs and the Commissioner of Education shall jointly develop an individual project management plan. This plan may include funding data, tentative schedule, assignment of responsibility, personnel to contact and other requirements for operations.

(b) A Bureau contracting officer will then negotiate a contract with the applicant for preparation of the planning documents (educational and facilities specifications). The Commissioner of Indian Affairs and the Commissioner of Education shall jointly:

(1) Provide program guidance to the applicant in developing educational specifications. The educational specifications should provide such information as educational goals, philosophy, demographic information, curriculum, teaching methods, class sizes, spatial relationships, operational logistics, staffing and adjunct requirements.

(2) Provide technical guidance to the applicant in developing facility specifications. The facility specifications should provide such information as environmental considerations, architectural/engineering features, facility space and relationships, occupancy, special equipment, engineering data, regulatory requirements, and cost estimate.

(c) The planning documents (educational and facilities specifications) prepared by the applicant must be reviewed and approved by the Bureau before one or more contracts can be negotiated under § 277.16 for the other phases of the project.

(d) In its discretion, the Bureau may make an exception to the requirement to contract with the applicant for the preparation of the planning documents and the Bureau may prepare the planning documents itself only when the applicant so requests and can clearly demonstrate that special circumstances exist which warrant the Bureau making such an exception.

(e) The contracts under this part shall be developed in accordance with the regulations in 41 CFR 1 as supplemented by 41 CFR 14 and 41 CFR 14H, except 41 CFR part 14H-70.

(f) The applicant has the option of performing the work itself or through subcontracts with outside consultants.

[43 FR 37448, Aug. 23, 1978]

§ 277.16 Contracts for other project phases.

(a) After the planning documents (educational and facilities specifications) are approved by the Bureau, a Bureau contracting officer shall negotiate one or more contracts with the applicant for the other phases of the project:

(1) Acquisition of sites.

(2) Preparation of the architectural design drawings and specifications.

(3) Actual construction of the facility.

(4) Acquisition of equipment.

(b) Paragraphs (e) and (f) of § 271.15a also apply to contracts under this section.

[43 FR 37448, Aug. 23, 1978]

§ 277.17 Funding provisions.

(a) When funds are available under subsections 14(a) or 14(b) of Pub. L. 81-815, those funds will be used first to fund as many projects as possible on the priority list prepared by the Commissioner of Education, beginning with the project highest on the priority list. When substantially all Pub. L. 81-815 funds available under subsection 14(a) or 14(b) are reserved for projects on the priority list, then Pub. L. 93-638 funds shall be used to fund the remaining projects on the priority list, beginning with the highest ranked project for which no Pub. L. 81-815 funds have been reserved.

(b) Projects which are partially funded under Pub. L. 93-638 in one fiscal year shall be given first consideration for additional Pub. L. 93-638 funds in the succeeding fiscal year in order to complete such projects.

(c) No funds from any contract under this Part shall be made available by any Federal agency directly to other than public agencies. However, school districts assisted by this Part may use funds provided under this Part to contract for necessary services with any appropriate individual, organization, or corporation.

(d) Funds approved for public school construction under this Part may not exceed the Federal share of the total cost of the proposed school facilities, as such facilities are defined within the meaning of Pub. L. 81-815, to serve both Indian and non-Indian children, with the definition of children to be as prescribed by Pub. L. 81-815.

(e) When non-Federal funds are involved, a local school district shall have 120 days from receipt of the notice that the project has been placed on the commitment-to-fund list to assemble the funds from local and/or State sources before the contract negotiations are completed. An extension may be granted by the Commis-

sioner of Indian Affairs for unusual circumstances.

[40 FR 51327, Nov. 4, 1975, as amended at 43 FR 37448, Aug. 23, 1978]

§ 277.18 Ownership of completed project.

After completion of a project funded under Pub. L. 93-638, the school district which was the contractor under this part or the State or both shall become the owner(s) of the project. The Bureau will not be responsible for ongoing maintenance of the project.

[43 FR 37449, Aug. 23, 1978]

§ 277.21 Costs included in contracts.

A contractor may include costs for the following in a contract or contracts under this Part: Planning, architectural design, site acquisition, facilities construction (including site development and supervision), and equipment in accordance with the approved educational and facilities specifications and equipment lists. Increases in administrative costs incurred by the contractor as the result of seeking and performing contracts awarded under this part may also be included and paid upon review and approval by the Bureau of Indian Affairs of the contractor's administrative cost proposals

[43 FR 37449, Aug. 23, 1978]

§ 277.22 Architectural design.

(a) Drawings and specifications for a project shall comply with such State and local laws, codes, ordinances and regulations pertaining to standards of construction and safety requirements, as may be applicable.

[16 Comp. Gen. 948 (1937)]

(b) Local education agencies shall give due consideration to excellence of architecture and design when constructing minimum school facilities under this Part.

(c) The Commissioner of Indian Affairs shall counsel with the contractor with respect to the professional qualifications and performance history of Architect/Engineer firms in order that the best qualified firm be selected. With the advice and assistance of the Commissioner of Indian Affairs, the contractor shall select an Architect/Engineer to prepare the plans and specifications. The contractor shall comply with State selection requirements in making the selection in addition to complying with the Indian preference requirements of 41 CFR Chapter 14. The contractor shall not enter into an Architect/Engineer agreement involving the expenditures of Federal funds until the Commissioner of Indian Affairs has reviewed the agreement.

(d) The drawings and specifications will conform to the educational and facilities specifications prepared in accordance with § 277.15a.

(e) The Bureau will review the drawings and specifications with the local education agency, the local Indian Education Committee and tribal governing body(s) of the tribe(s) to be served by the facility. After approval by the State and other regulatory agencies, the final drawings and specifications will be reviewed and approved by the Bureau.

[40 FR 51327, Nov. 4, 1975, as amended at 43 FR 37449, Aug. 23, 1978]

§ 277.23 Facilities construction.

The contractor usually bids, awards and administers the construction contract. The Commissioner of Indian Affairs will assist in preconstruction and construction activities to assure conformity with the requirements of Pub. L. 93-638. Approval of all proposed preconstruction documents will be obtained from the Commissioner of Indian Affairs. Assistance prior to the preparation of these and similar documents will be provided upon request. In this connection, the Commissioner of Indian Affairs may suggest a preliminary conference with the project architect and others if that seems desirable. The Bureau shall make interim inspections and audits during construction and participate in the final acceptance inspection.

§ 277.24 Selecting initial equipment.

Equipment procured with payments under this part must be approved by the Commissioner before invitations for bids or requests for proposals as to the acquisition of such equipment are issued. In order to obtain such approval, a list of equipment to be procured (indicating quantities, costs, and speci-

fications) shall be provided to the Commissioner for prior approval.

§ 277.25 Advance payments.

Advance payments to school districts will be made in accordance with the applicable provisions of 41 CFR 1 as supplemented by 41 CFR 14 and 41 CFR 14H, except 41 CFR Part 14H-70.

[40 FR 51327, Nov. 4, 1975, as amended 43 FR 37449, Aug. 23, 1978]

§ 277.26 Use and transfer of Government property.

(a) The use of Government-owned facilities for public school purposes may be authorized when not needed for Government activities. Transfer of title to such facilities (except land) may be arranged under the provisions of the Act of June 4, 1953 (67 Stat. 41), subject to the approval of the tribal government if property is located on a reservation.

(b) In carrying out a contract made under this Part, the Commissioner of Indian Affairs may, with the approval of the tribal government, permit a contractor to use existing buildings, facilities, and related equipment and other personal property owned by the Bureau under terms and conditions agreed upon for their use and maintenance. The property at the time of transfer must conform to the minimum standards established by the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

(c) Use of Government property is subject to the following conditions:

(1) When nonexpendable Government property is turned over to public school authorities under a use permit, the permittee shall insure such property against damage by flood, fire, rain, windstorm, vandalism, snow, and tornado in amounts and with companies satisfactory to the Bureau officer in charge of the property. In case of damage or destruction of the property by flood, fire, rain, windstorm, vandalism, snow or tornado, the insurance money collected shall be expended only for repair or replacement of property. Otherwise, insurance proceeds shall be paid to the Bureau.

(2) If the public school authority is self-insured and can present evidence of that fact to the Commissioner of Indian Affairs, insurance for lost or damaged property will not be required. However, the public school authority will be responsible for replacement of such lost or damaged property at no cost to the Government or for paying the Government enough to replace the property.

(3) The permittee shall maintain the property in a reasonable state of repair consistent with the intended use and educational purposes.

§ 277.27 Wage and labor standards.

All laborers and mechanics employed by contractors or subcontractors in constructing, altering, or repairing buildings or other facilities in connection with contracts under this Part shall be paid wages not less than those on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended.

§ 277.28 [Reserved]

§ 277.29 Liability and motor vehicle insurance.

(a) School districts shall obtain public liability and motor vehicle insurance under contracts entered into with the Bureau under this Part. However, where the Bureau contracting officer determines that the risk of death, personal injury or property damage under the contract is small and that the time and cost of procuring the insurance is great in relation to the risk, the contract may be exempted from this requirement.

(b) Notwithstanding paragraph (a) of this section, any contract which requires or authorizes, either expressly or by implication, the use of motor vehicles must contain a provision requiring the school district to provide liability insurance, regardless of how small the risk.

(c) School district is self-insured and can present evidence of that fact to the Commissioner of Indian Affairs, liability and motor vehicle insurance will not be required.

[40 FR 51327, Nov. 4, 1975, as amended at 43 FR 37449, Aug. 23, 1978]

§ 277.30 Recordkeeping.

A contractor will be required to develop and maintain a recordkeeping system which will:

(a) Fully reflect all financial transactions involving the receipt and expenditure of funds provided under the contract in a manner which will provide accurate, current and complete disclosure of financial status; correlation with budget or allowable cost schedules; and clear audit facilitating data.

(b) Reflect the amounts and sources of funds other than Bureau contract funds which may be included in the construction project.

(c) Provide for the creation, maintenance and safeguarding of records of lasting value.

§ 277.31 Audit and inspection.

(a) During the term of a contract under this Part and for three years after the project or undertaking is completed, the Comptroller General and the Secretary, or any of their duly authorized representatives, shall have access, for audit and examination purposes, to any of the contractor's books, documents, papers, and records which, in their opinion, may be related or pertinent to the contract or any subcontract.

(b) The contractor will be responsible for maintaining all documents such as invoices, purchase orders, canceled checks, balance sheets and all other records relating to financial transactions in a manner which will facilitate auditing. The contractor will be responsible for maintaining files of correspondence and other documents relating to the contract properly separated from general records or cross-referenced to general files.

(c) The contractor receiving funds under this Part shall be primarily responsible for contract compliance.

(d) The records involved in any claim or expenditure that has been questioned shall be further maintained until final determination has been made on the questioned expenditure.

(e) All contracts, reports, budgets, budget estimates, plans, and other documents pertaining to administration of the contract shall be made available by the contractor. The contractor shall provide information in accordance with the Freedom of Information Act.

§ 277.32 Freedom of information.

(a) Unless otherwise required by law, the Bureau shall not place restrictions on contractors which will limit public access to the contractor's records except when records must remain confidential.

(b) A contractor under this Part shall make all reports and information concerning the contract available to the Indian people which the contract affects. Reports and information may be withheld from disclosure only when both of the following conditions exist:

(1) The reports and information fall within one of the following exempt categories:

(i) Specifically required by statute or Executive order to be kept secret.

(ii) Commercial or financial information obtained from a person or firm on a privileged or confidential basis.

(iii) Personnel, medical, and similar files where disclosure would be a clearly unwarranted invasion of personal privacy.

(iv) Geological and geophysical information and data concerning wells.

(2) Disclosure is prohibited by statute or Executive order or sound grounds exist for using the exemption given in paragraph (b)(1) of this section.

(c) A request to inspect or copy reports and information shall be in writing and must reasonably describe the reports and information requested. The request may be delivered or mailed to the contractor. Within ten (10) working days after receiving the request, the contractor shall determine whether to grant or deny the request. The requester shall be notified immediately of the determination.

(d) The time limit for making a determination may be extended up to an additional ten (10) working days for good reason. The requester shall be notified in writing of the extension, reasons for the extension, and the date on which the determination is expected to be made.

§ 277.33 Reporting.

(a) A contractor under this Part shall make a detailed report to the Commissioner of Indian Affairs after construction is completed. The report shall include, but not be limited to, an accounting of the amounts and purposes for which the contract funds were expended.

(b) The contractor shall furnish other contract-related reports when and as required by the Commissioner of Indian Affairs.

(c) A contractor under this Part shall send copies of the reports required by paragraphs (a) and (b) of this section to the tribe(s) affected by the construction at the same time as the reports are sent to the Bureau.

§ 277.34 Repayment of funds.

Any funds paid under a contract entered into under this Part which are not expended, obligated or used for the purposes of the contract during its term shall be returned to the Bureau.

§ 277.35 Penalties.

If any officer, director, agent, or employee of, or connected with, any contractor or subcontractor under this Part embezzles, willfully misapplies, steals, or obtains by fraud any of the funds or property connected with the contract or subcontract, he shall be subject to the following penalties:

(a) If the amount involved does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) If the amount involved exceeds $100, he shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

§ 277.36 Applicable procurement regulations

School districts wanting to contract with the Bureau under this Part must comply with the applicable requirements in the Federal Procurement Regulations (41 CFR 1), as supplemented by the Interior Procurement Regulations (41 CFR 14) and the Bureau of Indian Affairs Procurement Regulations (41 CFR 14H), except 41 CFR Part 14H-70.

[40 FR 51327, Nov. 4, 1975, as amended at 43 FR 37449, Aug. 23, 1978]

§ 277.37 Privacy Act requirements.

(a) When a contractor operates a system of records to accomplish a Bureau function, the contractor shall comply with Subpart D of 43 CFR Part 2 which implements the Privacy Act (5 U.S.C. 552a). Examples of the contractor's responsibilities are:

(1) To continue maintaining those systems of records declared by the Bureau to be subject to the Privacy Act as published in the FEDERAL REGISTER.

(2) To make such records available to individuals involved.

(3) To disclose an individual's record to third parties only after receiving permission from the individual to whom the record pertains. 43 CFR 2.56 lists exceptions to this procedure.

(4) To establish a procedure to account for access, disclosures, denials, and amendments to records.

(5) To provide safeguards for the protection of the records.

(b) The contractor may not:

(1) Discontinue or alter any established systems of records without prior approval of the appropriate Bureau systems manager.

(2) Deny request for notification or access or records without prior approval of the appropriate Bureau systems manager.

Subpart D—Contract Revision or Cancellation

§ 277.41 Contract revision or amendment.

Any contract made under this Part may be revised or amended as deemed necessary to carry out the purposes of the contract. A contractor may make a written request for a revision or amendment of a contract to the Bureau contracting officer.

§ 227.42 Canceling a contract for cause.

(a) Any contract entered into under this Part may be canceled for cause when the contractor fails to perform the work called for under the contract.

(b) Before canceling the contract, the Bureau will advise the contractor in writing of the following:

(1) The reasons why the Bureau is considering canceling the contract.

(2) That the contractor will be given an opportunity to bring its work up to an acceptable level.

(c) If the contractor does not overcome the deficiencies in its contract performance, the Bureau shall cancel the contract for cause. The Bureau will notify the contractor, in writing, of the cancellation. The notice shall give the reasons for the cancellation and the right of the contractor to appeal under Subpart C of 43 CFR Part 4.

(d) When a contract is cancelled for cause, the Bureau will either perform the work with its own forces or by another contract, as appropriate.

Subpart E—Appeals

§ 277.51 Contract appeal.

A contractor may appeal an adverse decision or action of a Bureau contracting officer regarding a contract under this Part as provided in Subpart C of 43 CFR Part 4.

§ 277.52 Appeal from decision to cancel contract for cause.

A contractor may appeal the decision of a Bureau official to cancel a contract under this Part for cause. The appeal shall be made as provided in subpart C of 43 CFR Part 4.

§ 277.53 Other appeals.

Any decision or action taken by a Bureau official under this Part, other than those given in §§ 277.51 and 277.52, may be appealed only as provided in Part 2 of this chapter.

APPENDIX—EXTENSION OF THE TRUST OR RESTRICTED STATUS OF CERTAIN INDIAN LANDS

This appendix contains citations of Executive orders and acts of Congress continuing the trust or restricted period of Indian land, which would have expired otherwise, within the several Indian reservations in the States named. The asterisk to the left of the name of a reservation indicates that the reservation is subject to the benefits of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461-479), as amended, and as therein provided the trust or restricted period of the land is extended indefinitely. Where the name of a reservation is not preceded by an asterisk, such reservation is not subject to the Reorganization Act and is not subject to the benefits of such indefinite trust or restricted period extension, but such reservation is dependent upon acts of Congress or Executive orders for extension of the trust or restricted period of the land.

For the purpose of insuring the continuation of the trust or restricted status of Indian allotments within Indian reservations not subject to the Reorganization Act, Congress by the act of June 15, 1935 (49 Stat. 378) reimposed such restrictions as may have been expired between the dates of June 18, 1934, and December 31, 1936.

State	Reservation	E. O. No.	Date	Period of extension
Arizona	*Papago	2066	Oct. 27, 1914	10 years.
Do	do	4464	June 28, 1926	Do.
California	Agua Caliente	3446	Apr. 30, 1921	Do.
Do	do	5580	Mar. 16, 1931	Do.
Do	Cabazon and Twenty-nine Palms	3302	July 7, 1920	5 years.
Do	do	4159	Feb. 19, 1925	10 years.
Do	*Capitan Grande	3048	Feb. 27, 1919	5 years.
Do	do		Act of Feb. 8, 1927 (44 Stat. 1061)	10 years.
Do	Hoopa Valley (Klamath River)	2943	Aug. 23, 1918	1 year.
Do	do		Sept. 23, 1919	Do.
Do	do	3304	July 10, 1920	10 years.
Do	do	3980	Mar. 26, 1924	15 years.
Do	do	5416	Aug. 4, 1930	10 years.
Do	Mission Bands Augustine	2795	Jan. 26, 1918	Do.

State	Reservation	E. O. No.	Date	Period of extension
California	Campo	2795	Jan. 26, 1918	10 years.
Do	*Cuyapipe	2795	do	Do.
Do	Inaja	2795	do	Do.
Do	*Laguna	2795	do	Do.
Do	*La Posta	2795	do	Do.
Do	*Manzanita	2795	do	Do.
Do	Mesa Grande	2795	do	Do.
Do	Pala	2795	do	Do.
Do	Ramona	2795	do	Do.
Do	Santa Ysabel	2795	do	Do.
Do	Sycuan	2795	do	Do.
Do	do	3383	Jan. 7, 1921	25 years.
Do	San Manuel	2795	Jan. 26, 1918	10 years.
Do	Temecula	2795	do	Do.
Do	All of above Mission Bands	4765	Nov. 23, 1927	Do.
Do	Morongo	6341	Oct. 17, 1933	Do.
Do	Pala	3383	Jan. 7, 1921	25 years.
Do	do		Act of Feb. 11, 1936 (49 Stat. 1106)	10 years.
Do	Potrero and Rincon	2684	Aug. 16, 1917	Do.
Do	do	4687	July 11, 1927	Do.
Do	*Round Valley	3223	Feb. 5, 1920	3 years.
Do	do	3805	Mar. 5, 1923	10 years.
Do	do	3995	Apr. 19, 1924	Do.
Do	do	5953	Nov. 23, 1932	Do.
Do	Temecula	3699	June 27, 1922	Do.
Do	do	5768	Dec. 30, 1931	Do
Do	Torres-Martinez	7009	Apr. 10, 1935	Do.
Idaho	Nez Perce	3250	Mar. 24, 1920	Do.
Do	do	4694	July 22, 1927	Do.
Do	do	5305	Mar. 18, 1930	Do.
Kansas and Nebraska	*Iowa	2966	Sept. 23, 1918	Do.
Do	do	5023	Jan. 10, 1929	Do.
Do	*Sac and Fox	2607	May 4, 1917	Do.
Do	do	4571	Jan. 24, 1927	Do.
Do	do	5768	Dec. 30, 1931	Do.
Do	Kickapoo	3301	July 3, 1920	1 year.
Do	do	3447	May 2, 1921	10 years.
Do	do	5415	Aug. 4, 1930	Do.
Do	do	5626	May 18, 1931	Do.
Do	*Potawatomi	2747	Nov. 2, 1917	Do.
Do	do	2927	July 30, 1918	Do.
Do	do	3312	July 21, 1920	Do.
Do	do	4688	July 11, 1927	Do.
Do	do	4858	Apr. 16, 1928	Do.
Do	do	5299	Mar. 10, 1930	Do.
Do	do	5356	May 28, 1930	Do.
Do	do	5556	Feb. 11, 1931	Do.
Minnesota	*Fond du Lac	3445	Apr. 30, 1921	Do.
Do	do	5575	Mar. 12, 1931	Do.
Do	*Grand Portage	3613	Jan. 12, 1922	Do.
Do	do	5768	Dec. 30, 1931	Do.
Do	*Winnibigoshish	3614	Jan. 12, 1922	Do.
Do	do	5466	Oct. 22, 1930	Do.
Do	do	5768	Dec. 30, 1931	Do.
Do	*Deer Creek	4154	Feb. 10, 1925	Do.
Do	*Bois Fort	4233	May 26, 1925	Do.
Do	*Leech Lake, Cass Lake, and White Oak Point.	4298	Aug. 29, 1925	Do.
Do	do	5466	Oct. 22, 1930	Do.
Do	*White Earth	4642	May 5, 1927	Do.
Do	do	5768	Dec. 30, 1931	Do.
Do	do	5953	Nov. 23, 1932	Do.
Do	*Red Lake	5383	June 26, 1930	Do.
Montana	Crow	5301	Mar. 12, 1930	Do.
Do	do	5768	Dec. 30, 1931	Do.
Do	do	7001	Apr. 5, 1935	Do.
Do	do		Act of April 1940 (54 Stat. 106).	To May 23, 1940.
Do	*Flathead	5953	Nov. 23, 1932	10 years.

State	Reservation	E. O. No.	Date	Period of extension
Nebraska	*Omaha		July 3, 1909	10 years.
Do	do	3111	July 10, 1919	Do.
Do	do	4145	Jan. 28, 1925	Do.
Do	do	4548	Dec. 4, 1926	Do.
Do	do	5148	July 3, 1929	Do.
Do	do	5253	Dec. 31, 1929	Do.
Do	*Ponca	2374	Apr. 29, 1916	Do.
Do	do	4407	Mar. 30, 1926	Do.
Do	*Santee		Dec. 12, 1910	Do.
Do	do	3348	Nov. 5, 1920	Do.
Do	do	3722	Aug. 12, 1922	Do.
Do	*Santee Sarah Jones allotment	4075	Sept. 17, 1924	Do.
Do	*Santee	5474	Oct. 31, 1930	Do.
Do	do	5768	Dec. 30, 1931	Do.
Do	do	5953	Nov. 23, 1932	Do.
Do	*Winnebago	2965	Sept. 20, 1918	Do.
Do	do	4548	Dec. 4, 1926	Do.
Do	do	4979	Oct. 16, 1928	Do.
Do	do	4994	Nov. 14, 1928	Do.
Do	*Sac and Fox, William Banks allotment	3878	July 27, 1923	1 year.
Nevada	*Walker River	5730	Oct. 8, 1931	10 years.
North Dakota	Devils Lake	2804	Feb. 11, 1918	Do.
Do	do	3853	May 23, 1923	Do.
Do	do	4775	Nov. 30, 1927	Do.
Do	do	5303	Mar. 12, 1930	Do.
Do	do	5768	Dec. 30, 1931	Do.
Do	do	5953	Nov. 23, 1932	Do.
Do	*Fort Berthold	4293	Aug. 25, 1925	Do.
Do	*Standing Rock	5768	Dec. 30, 1931	Do.
Do	do	5953	Nov. 23, 1932	Do.
Oklahoma	Absentee Shawnee and Citizen Potawatomi	2494	Nov. 24, 1916	Do.
Do	do	2512	Jan. 15, 1917	Do.
Do	do	4557	Dec. 23, 1926	Do.
Do	Cheyenne and Arapaho	2580	Apr. 4, 1917	Do.
Do	do	4587	Feb. 17, 1927	Do.
Do	Eastern Shawnee	2317	Feb. 15, 1916	Do.
Do	do	4384	Feb. 20, 1926	Do.
Do	do	5768	Dec. 30, 1931	Do.
Do	Mexican Kickapoo	3047	Feb. 27, 1919	5 years.
Do	do	4029	June 19, 1924	10 years.
Do	do		Act of Feb. 17, 1933 (47 Stat. 819).	Do.
Do	Modoc	2453	Sept. 14, 1916	Do.
Do	do	4470	July 1, 1926	Do.
Do	Ottawa, Seneca and Wyandotte	2591	Apr. 11, 1917	Do.
Do	do	4588	Feb. 17, 1927	Do.
Do	Pawnee	2816	Mar. 2, 1918	Do.
Do	do	4898	May 29, 1928	Do.
Do	Ponca	3327	Sept. 19, 1920	1 year.
Do	do	3363	Dec. 1, 1920	25 years.
Do	do	5539	Jan. 23, 1931	10 years.
Do	Sac and Fox, and Iowa		Mar. 27, 1896	Do.
Do	do		July 23, 1906	Do.
Do	do		Aug. 28, 1906	Do.
Do	do	2432	Aug. 1, 1916	Do.
Do	do	4435	Apr. 29, 1926	Do.
Do	Tonkawa	2866	May 25, 1918	Do.
Do	Tonkawa (Oakland)	4816	Feb. 25, 1928	Do.
Do	Kaw		Act of March 1923 (42 Stat. 1561).	25 years.
Do	do		Act of May 27, 1924 (43 Stat. 176)	20 years.
Do	Otoe and Missouri	4281	Aug. 11, 1925	10 years.
Do	do	5728	Sept. 29, 1931	Do.
Do	do	5768	Dec. 30, 1931	Do.
Do	Kiowa, Comanche, Apache, and Wichita	4398	Mar. 18, 1926	Do.
Do	do	5953	Nov. 23, 1932	Do.

State	Reservation	E. O. No.	Date	Period of extension
Oklahoma	Kiowa, Comanche, Apache, and Wichita	5955	Nov. 30, 1932 (Gertrude Lamb)	10 years.
Do	Seneca	5306	Mar. 18, 1930	Do.
Do	Quapaw		Act of Mar. 3, 1921 (41 Stat. 1248) as amended Nov. 18, 1921 (42 Stat. 1570)	25 years.
Do	do		As supplemented or amended by the act of July 27, 1939 (53 Stat. 1127)	Do.
Oregon	*Grande Ronde	2376	Apr. 29, 1916	10 years.
Do	do	4408	Mar. 30, 1926	Do.
Do	Siletz	3110	July 10, 1919	Do.
Do	Siletz (cont.)	5087	Apr. 1, 1929	Do.
Do	*Warm Springs	3586	Dec. 7, 1921	Do.
Do	do	5734	Oct. 17, 1931	Do.
Do	Umatilla	4024	June 10, 1924	Do.
Do	do	5516	Dec. 17, 1930	Do.
Do	Klamath	6961	Feb. 4, 1935	Do.
Do	do		Act of Dec. 24, 1942 (56 Stat. 108)	25 years.
South Dakota	Crow Creek	3362	Nov. 30, 1920	Do.
Do	do	5768	Dec. 30, 1931	10 years.
Do	do	6968	Feb. 9, 1935	Do.
Do	*Rosebud	4417	Apr. 14, 1926	Do.
Do	do	5028	Jan. 16, 1929	Do.
Do	do	5302	Mar. 12, 1930	Do.
Do	do	5768	Dec. 30, 1931	Do.
Do	Sisseton and Wahpeton	1916	Apr. 16, 1914	Do.
Do	do	3994	Apr. 19, 1924	15 years.
Do	*Yankton Sioux	2363	Apr. 20, 1916	10 years.
Do	do	4406	Mar. 30, 1926	Do.
Do	do	5173	Aug. 9, 1929	Do.
Do	*Lower Brule	4981	Oct. 20, 1923	Do.
Do	*Pine Ridge	5557	Feb. 13, 1931	Do.
Do	do	5768	Dec. 30, 1931	Do.
Do	do	5953	Nov. 23, 1932	Do.
Do	*Cheyenne River	5546	Jan. 31, 1931	Do.
Do	do	5768	Dec. 30, 1931	Do.
Utah	*Uncompahgre, Uintah and White River Bands of Utes	5357	May 29, 1930	Do.
Washington	Chief Moses Band	2109	Dec. 23, 1914	Do.
Do	do	4382	Feb. 10, 1926	10 years from Mar. 8, 1926
Do	Colville	4157	Feb. 17, 1925	10 years.
Do	do	6962	Feb. 4, 1935	Do.
Do	*Quinaielt	5768	Dec. 30, 1931	Do.
Do	Spokane	6939	Jan. 7, 1935	Do.
Do	Yakima	3630	Feb. 3, 1922	Do.
Do	do	4168	Mar. 11, 1925	Do.
Do	do	5746	Nov. 10, 1931	Do.
Do	do	7036	May 8, 1935	Do.
Do	do		Act of May 27, 1937 (50 Stat. 210)	To July 9, 1942.
Wisconsin	*Oneida	2623	May 19, 1917	1 year.
Do	do	2856	May 4, 1918	9 years.
Do	do	4600	Mar. 1, 1927	10 years.
Wyoming	Wind River	5768	Dec. 30, 1931	Do.
Do	do	5953	Nov. 23, 1932	Do.

Pursuant to act of June 21, 1906 (34 Stat. 325) extending trust or other period of restriction contained in patents issued to Indians for land on the public domain, the following orders have been promulgated:

E. O. No	Date	Period of extension
2133	Feb. 3, 1915	1 year.
2326	Feb. 23, 1916	Do.
2505	Jan. 3, 1917	Do.
2778	Dec. 31, 1917	Do.
3024	Jan. 11, 1919	Do.
3204	Dec. 23, 1919	Do.
3365	Dec. 7, 1920	25 years.

No further separate orders covering extension of trust periods on public domain allotments were issued subsequent to Executive Order 3365 of December 7, 1920. The trust or other periods of restriction contained in patents issued to Indians for land on the public domain have thereafter been extended by the terms of the general Executive orders.

GENERAL ORDERS

E. O. No	Date	Period of extension
6498	Dec. 15, 1933	10 years.
6926	Dec. 20, 1934 (Oklahoma only)	Do.
7206	Oct. 14, 1935 (Oklahoma only)	Do.
7464	Sept. 30, 1936	25 years.
7716	Sept. 29, 1937	Do.
7984	Oct. 7, 1938	Do.
8276	Oct. 28, 1939	Do.
8580	Oct. 29, 1940	Do.
8965	Dec. 10, 1941	Do.
9272	Nov. 17, 1942	Do.
9398	Nov. 25, 1943	Do.
9500	Nov. 14, 1944	Do.
9659	Nov. 21, 1945	Do.
9811	Dec. 17, 1946	Do.
9920	Jan. 8, 1948, effective Jan. 1, 1948	Do.
10027	Jan. 6, 1949	Do.
10091	Dec. 11, 1949	Do.
10191	Dec. 13, 1950	Do.

Beginning with Executive Order 6498, issued December 15, 1933, regardless of the location of the allotments, all trust or restrictive periods on allotments expiring on a given date have been extended by one general Executive order issued annually.

GENERAL ORDERS

Order	Date	Per. of exten.	FR citation
Sec. Int.	Dec. 29, 1951	1 year	17 FR 799.
Do	Dec. 29, 1952	do	18 FR 106.
Do	Dec. 28, 1953	do	18 FR 8897.
Do	Dec. 17, 1954	do	19 FR 8658.
Do	Nov. 17, 1955	do	20 FR 8519.
Do	Dec. 6, 1956	do	21 FR 9644.
Do	Jan. 7, 1958	do	23 FR 112.
Do	Jan. 7, 1959	5 yrs	24 FR 127.
Do	Dec. 8, 1959	do	24 FR 9847.
Do	Dec. 24, 1960	do	25 FR 13688.
Do	Dec. 28, 1961	do	26 FR 12569.
Do	Jan. 4, 1963	do	28 FR 122.
Do	Oct. 31, 1963	do	28 FR 11630.
Do	Oct. 9, 1968	do	33 FR 15067.
Dep. Ass.			
Do	Dec. 14, 1973	do	38 FR 33463.
Sec. Int.	Dec. 14, 1978	do	38 FR 58369.

NOTE: Executive Orders and orders of the Secretary of the Interior (17 FR 799, Jan. 26, 1952; 18 FR 106, Jan. 6, 1953; 18 FR 8897, Dec. 31, 1953; 19 FR 8658, Dec. 17, 1954; 20 FR 8519, Nov. 11, 1955; 21 FR 9644, Dec. 6, 1956; 23 FR 112, Jan. 7, 1958; 24 FR 127, Jan. 7, 1959; 24 FR 9847, Dec. 8, 1959; 25 FR 13688, Dec. 24, 1960; 26 FR 12569, Dec. 28, 1961; 28 FR 122, Jan. 4, 1963; 28 FR 11630, Oct. 31, 1963; 33 FR 15067, Oct. 9, 1968; 38 FR 34463, Dec. 14, 1973; 43 FR 58369, Dec. 14, 1978), extended the trust periods on Indian lands expiring during the calendar years of 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964-1968, 1969-1973, 1974-1978, 1979-1983, respectively.

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CHAPTER II—INDIAN ARTS AND CRAFTS BOARD, DEPARTMENT OF THE INTERIOR

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PART 301—NAVAJO, PUEBLO, AND HOPI SILVER AND TURQUOISE PRODUCTS; STANDARDS

Sec.

301.1 Eligibility for use of Government stamp.
301.2 Specifications of material.
301.3 Specifications of dies.
301.4 Application of dies.
301.5 Applique elements in design.
301.6 Stone for ornamentation.
301.7 Stonecutting.
301.8 Finish.

AUTHORITY: Sec. 3, 49 Stat. 892; 25 U.S.C. 305b. Interpret or apply sec. 2, 49 Stat. 891, as amended; 25 U.S.C. 305a.

SOURCE: The provisions of this Part 301 contained in standards for Navajo, Pueblo, and Hopi silver and turquoise products, Mar. 9, 1937, unless otherwise noted.

§ 301.1 Eligibility for use of Government stamp.

Subect to the detailed requirements that follow, the Government stamp shall be affixed only to work individually produced and to work entirely hand-made. No object produced under conditions resembling a bench work system, and no object in whose manufacture any power-driven machinery has been used, shall be eligible for the use of the Government stamp.

§ 301.2 Specifications of material.

Silver slugs of 1 ounce weight or other silver objects may be used, provided their fineness is at least 900, and provided further that no silver sheet shall be used. Unless cast, the slug or other object is to be hand hammered to thickness and shape desired. The only exceptions here are pins on brooches or similar objects; ear screws for earrings; backs for tie clasps and chains which may be of silver of different fineness and mechanically made.

§ 301.3 Specification of dies.

Dies used are to be entirely hand-made, with no tools more mechanical than hand tools and vise. Dies shall contain only a single element of the design.

§ 301.4 Application of dies.

Dies are to be applied to the object with the aid of nothing except hand tools.

§ 301.5 Applique elements in design.

All such parts of the ornament are to be hand-made. If wire is used, it is to be hand-made with no tool other than a hand-made draw plate. These requirements apply to the boxes for stone used in the design.

§ 301.6 Stone for ornamentation.

In addition to turquoise, the use of other local stone is permitted. Turquoise, if used, must be genuine stone, uncolored by any artificial means.

§ 301.7 Stonecutting.

All stone used, including turquoise, is to be hand-cut and polished. This permits the use of hand- or foot-driven wheels.

§ 301.8 Finish.

All silver is to be hand polished.

PART 304—NAVAJO, PUEBLO, AND HOPI SILVER, USE OF GOVERNMENT MARK

Sec.

304.1 Penalties for imitation or unauthorized use.
304.2 Marking and ownership of dies.
304.3 Classifying and marking of silver.
304.4 Standards and additional requirements.
304.5 Dies to identify tribe.
304.6 Responsibility of dealer.
304.7 Eligibility of silver meeting standards.
304.8 Use of label by dealer.
304.9 Placards; display of regulations.

AUTHORITY: Sec. 3, 49 Stat. 892; 25 U.S.C. 305b. Interpret or apply sec. 2, 49 Stat. 891, as amended; 25 U.S.C. 305a.

SOURCE: The provisions of this Part 304 contained in regulations governing use of Government mark on Navajo, Pueblo, and Hopi silver, April 2, 1937, unless otherwise noted.

§ 304.1 Penalties for imitation or unauthorized use.

The use of Government trade-marks in an unauthorized manner, or the colorable imitation of such marks, is sub-

ject to the criminal penalties imposed by section 5 of the said act (49 Stat. 892; 25 U.S.C. 305d).

§ 304.2 Marking and ownership of dies.

All dies used to mark silver will be provided by and owned by the Indian Arts and Crafts Board.

§ 304.3 Classifying and marking of silver.

For the present the Indian Arts and Crafts Board reserves to itself the sole right to judge what silver complying with its standards shall bear the Government mark. All such marking of silver shall, for the present, be done by an agent of the Indian Arts and Crafts Board.

§ 304.4 Standards and additional requirements.

No piece of silver, though made in compliance with the standards set forth by the Indian Arts and Crafts Board, shall bear the Government mark unless:

(a) Its weight is substantially in accord with Indian usage and custom.

(b) Its design elements are substantially in accord with Indian usage and tradition.

(c) Its workmanship is substantially that expected in good hand craftsmanship.

§ 304.5 Dies to identify tribe.

Dies are marked with name of tribe. A Navajo stamp will be used where the marker is a Navajo Indian; similarly, for Zuni, Hopi, and Rio Grande Pueblo.

§ 304.6 Responsibility of dealer.

All dies will be numbered, and each wholesaler or dealer will be held responsible for any violation of standards in silver that bears his mark. Until such time as the Board relinquishes its sole right to mark silver, the responsibility of the dealer for whom silver is marked will be confined to misrepresentations as to quality of silver and of stones used for ornament and to methods of production.

§ 304.7 Eligibility of silver meeting standards.

In addition to silver currently made in compliance with the standards of the Indian Arts and Crafts Board, other silver products made prior to the promulgation of the regulations in this part may be stamped, provided the maker thereof is known to be an Indian, and the product satisfies the requirements in § 304.4.

§ 304.8 Use of label by dealer.

Any dealer offering for sale silver bearing the Government mark may, if he wishes, attach to silver so marked a label or ticket calling attention to the Government mark.

§ 304.9 Placards; display of regulations.

Every dealer offering for sale silver bearing the Government mark may display in a prominent place a placard setting forth the standards and the regulations in this part, such placard to be furnished by the Indian Arts and Crafts Board.

[Regs., Ap. 2, 1937, as amended Feb. 21, 1938]

PART 307—NAVAJO ALL-WOOL WOVEN FABRICS; USE OF GOVERNMENT CERTIFICATE OF GENUINENESS

Sec.

307.1 Penalties.
307.2 Certificates of genuineness; by whom affixed.
307.3 Granting of licenses, contract and bond requirements.
307.4 Standards for fabrics.
307.5 Hand seal press and certificates to be furnished.
307.6 Fees.
307.7 Suspension of license.
307.8 Revocation of license.
307.9 Surrender of license.
307.10 Period of license.
307.11 Certificates fastened to fabrics.
307.12 Certificates, dating and signing thereof.
307.13 Licensee's responsibility.

AUTHORITY: Sec. 3, 49 Stat. 892; 25 U.S.C. 305b. Interpret or apply sec. 2, 49 Stat. 891, as amended; 25 U.S.C. 305a.

SOURCE: The provisions of this Part 307 contained in regulations governing the use of Government certificate of genuineness for Navajo all-wool woven fabrics, Oct. 20, 1937, unless otherwise noted.

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§ 307.1 Penalties.

The use of Government trade-marks in an unauthorized manner, or the colorable imitation of such marks, is subject to the criminal penalties imposed by section 5 of the said act (49 Stat. 892; 25 U.S.C. 305d), which provides:

Any person who shall counterfeit or colorably imitate any Government trade-mark used or devised by the Board as provided in section 305a of this chapter, or shall, except as authorized by the Board, affix any such Government trade-mark, or shall knowingly, willfully, and corruptly affix any reproduction, counterfeit, copy, or colorable imitation thereof upon any products, Indian or otherwise, or to any labels, signs, prints, packages, wrappers, or receptacles intended to be used upon or in connection with the sale of such products, or any person who shall knowingly make any false statement for the purpose of obtaining the use of any such Government trade-mark shall be guilty of a misdemeanor, and upon conviction thereof shall be enjoined from further carrying on the act or acts complained of and shall be subject to a fine not exceeding $20,000, or imprisonment not exceeding six months, or both such fine and imprisonment.

§ 307.2 Certificates of genuineness; by whom affixed.

Government certificates of genuineness for Navajo all-wool woven fabrics may be affixed to fabrics meeting the conditions specified in § 307.4 by persons duly authorized to affix such certificates, under license issued by the Indian Arts and Crafts Board.

§ 307.3 Granting of licenses, contract and bond requirements.

A license may be granted to any person desiring to use the Government certificate of genuineness for Navajo all-wool woven fabrics who shall make application therefor and shall execute a contract acceptable to the Indian Arts and Crafts Board providing for the use of such certificates in conformity with the regulations in this part, which contract shall be accompanied by an indemnity bond acceptable to the Indian Arts and Crafts Board, in the amount of $500, conditioned upon faithful performance of such contract.

§ 307.4 Standards for fabrics.

No fabric may carry the Government certificate of genuineness for Navajo all-wool woven fabric unless all of the following conditions are met:

(a) The fabric is made entirely of local wool that is locally hand-spun and is entirely woven on a native Navajo loom;

(b) The fabric is made by a member of the Navajo Tribe working under conditions not resembling a workshop or factory system;

(c) The size of the fabric is indicated in the certificate;

(d) The licensee signs the certificate.

[Regs., Oct. 20, 1937, as amended at 4 FR 2436, June 17, 1939]

§ 307.5 Hand seal press and certificates to be furnished.

Each licensee will be furnished, upon payment of the registration and license fees specified in § 307.6 one hand seal press and a supply of blank Government certificates, which shall be used only in accordance with this license, and shall remain at all times the property of the Board.

§ 307.6 Fees.

Each licensee shall pay a registration fee of $2, together with a license fee which shall be determined on the basis of $1 for each 40 Government certificates ordered by the licensee from the Board.

§ 307.7 Suspension of license.

In the event that complaint is made to the Board that any provision of any license or of the regulations in this part has been violated by any licensee, the Board may suspend the license and all authority conferred thereby, in its discretion, for a period of 30 days, by notifying the licensee of such suspension, by mail, by telegraph, or in any other manner.

§ 307.8 Revocation of license.

In the event that the Board, after giving a licensee written notice of charges and affording an opportunity to reply to such charges, orally or in writing, is satisfied that any provision of any license or of the regulations in this part has been violated by any li-

censee, the Board may revoke the license by notifying the licensee of such revocation, by mail, by telegraph, or in any other manner. Upon notice of such revocation all authority conferred by the license so revoked shall forthwith terminate, but the validity of actions taken while the license was in force shall not be affected.

§ 307.9 Surrender of license.

Any license may be surrendered by the licensee at any time by surrendering to the Board the Government hand seal press and unused certificates of genuineness entrusted to the licensee, accompanied by a copy of the license marked "surrendered" and signed by the licensee. Such surrender shall take effect as of the time that such property and document have been received by the Board.

§ 307.10 Period of license.

Each license shall be in effect from the date of execution thereof and until 1 year thereafter, unless sooner surrendered or canceled in accordance with the foregoing provisions.

§ 307.11 Certificates fastened to fabrics.

Certificates shall be fastened to the woven fabric by wire caught in a lead seal disc that shall be impressed and made fast with the hand seal press furnished by the Indian Arts and Crafts Board.

§ 307.12 Certificates, dating and signing thereof.

When the certificate is first affixed the lower of the two spaces provided for the purpose shall be signed by the licensee. In the event the ultimate retailer of any fabric so marked is not the person who originally attached the certificate, that ultimate retailer may sign the upper of the two spaces provided for the purpose and detach the original signature.

[4 FR 2436, June 17, 1939]

§ 307.13 Licensee's responsibility.

Certificates may be attached only to products which are in the ownership or possession of the licensee. Certificates will be consecutively numbered and records of the allocation of such certificates will be maintained by the Indian Arts and Crafts Board. Each licensee will be held responsible for the proper use of such certificates and of the Government hand seal press furnished to such licensee.

PART 308—REGULATIONS FOR USE OF CERTIFICATES OF THE INDIAN ARTS AND CRAFTS BOARD TO BE ATTACHED TO THEIR TRADE-MARKS BY INDIAN ENTERPRISES CONCERNED WITH THE PRODUCTION AND SALE OF GENUINE HANDICRAFTS

Sec.

308.1 Penalties.
308.2 Certificates of genuineness to be attached to trade-marks.
308.3 Conditions of eligibility to attach certificates.
308.4 Revocation of privilege of attaching certificates.

AUTHORITY: Sec. 3, 49 Stat. 892; 25 U.S.C. 305b. Interpret or apply sec. 2, 49 Stat. 891, as amended; 25 U.S.C. 305a.

SOURCE: 8 FR 8736, June 26, 1943, unless otherwise noted.

§ 308.1 Penalties.

The use of Government trade-marks in an unauthorized manner, or the colorable imitation of such marks, is subject to the criminal penalties imposed by section 5 of the said act (49 Stat. 892; 25 U.S.C. 305d), which provides:

Any person who shall counterfeit or colorably imitate any Government trade-mark used or devised by the Board as provided in section 305a of this chapter, or shall, except as authorized by the Board, affix any such Government trade-mark, or shall knowingly, willfully, and corruptly affix any reproduction, counterfeit, copy, or colorable imitation thereof upon any products Indian or otherwise, or to any labels, signs, prints, packages, wrappers, or receptacles intended to be used upon or in connection with the sale of such products, or any person who shall knowingly make any false statement for the purpose of obtaining the use of any such Government trade-mark, shall be guilty of a misdemeanor, and upon conviction thereof shall be enjoined from further carrying on the act or acts complained of and shall be subject to a fine not exceeding $2,000, or imprisonment not exceeding six months, or both such fine and imprisonment.

§ 308.2 Certificates of genuineness to be attached to trade-marks.

(a) To insure the widest distribution of genuine Indian handicraft products, and to protect the various enterprises organized by individual Indian craftsmen, or by groups of Indian craftsmen, for the purpose of the production and sale of such handicraft products, the Indian Arts and Crafts Board offers each such enterprise the privilege of attaching to its trademark a certificate declaring that it is recognized by the Indian Arts and Crafts Board as an Indian enterprise dealing in genuine Indian-made handicraft products, and that its trade-mark has the approval of the Board.

(b) The certificate shall consist of a border around the trade-mark bearing the words "Certified Indian Enterprise Genuine Handicrafts, U.S. Indian Arts and Crafts Board, Department of the Interior," and these words may be used wherever the trade-mark appears.

§ 308.3 Conditions of eligibility to attach certificates.

To be eligible to attach the certificate, an enterprise must meet the following conditions:

(a) It must offer for sale only Indian-made genuine handicraft products, i.e., objects produced by Indian craftsmen with the help of only such devices as allow the manual skill of the maker to condition the shape and design of each individual product.

(b) It must be entirely Indian owned and organized either by individual Indians or by groups of Indians.

(c) It must agree to apply certificates of genuineness only to such products as meet the standards of quality prescribed by the Indian Arts and Crafts Board at the time of the application of the enterprise for the privilege of attaching the certificate.

(d) It must agree to obtain the approval of the Indian Arts and Crafts Board as to the manner of production of the certificates.

§ 308.4 Revocation of privilege of attaching certificates.

If an enterprise, after securing the privilege of attaching the certificates, should fail to meet the above-named conditions, the Board reserves the right to revoke the privilege.

PART 310—USE OF GOVERNMENT MARKS OF GENUINENESS FOR ALASKAN INDIAN AND ALASKAN ESKIMO HAND-MADE PRODUCTS

Sec.

310.1 Penalties.

ALASKAN INDIAN

310.2 Certificates of genuineness, authority to affix.
310.3 Conditions.
310.4 Application of mark.

ALASKAN ESKIMO

310.5 Certificates of genuineness, authority to affix.
310.6 Conditions.
310.7 Application of mark.

AUTHORITY: Sec. 3, 49 Stat. 892; 25 U.S.C. 305b. Interpret or apply sec. 2, 49 Stat. 891, as amended; 25 U.S.C. 305a.

SOURCE: 4 FR 515, Feb. 4, 1939, unless otherwise noted.

§ 310.1 Penalties.

The use of Government trade-marks in an unauthorized manner, or the colorable imitation of such marks, is subject to the criminal penalties imposed by section 5 of the said act (49 Stat. 892; 25 U.S.C., 305d), which provides:

> Any person who shall counterfeit or colorably imitate any Government trade-mark used or devised by the Board as provided in section 305a of this chapter, or shall, except as authorized by the Board, affix any such Government trade-mark, or shall knowingly, willfully, and corruptly affix any reproduction, counterfeit, copy, or colorable imitation thereof upon any products, Indian or otherwise, or to any labels, signs, prints, packages, wrappers, or receptacles intended to be used upon or in connection with the sale of such products, or any person who shall knowingly make any false statement for the purpose of obtaining the use of any such Government trade-mark, shall be guilty of a misdeameanor, and upon conviction thereof shall be enjoined from further carrying on the act or acts complained of and shall be subject to a fine not exceeding $2,000 or imprisonment not exceeding six months or both such fine and imprisonment.

ALASKAN INDIAN

§ 310.2 Certificates of genuineness, authority to affix.

Government marks of genuineness for Alaskan Indian hand-made products may be affixed to articles meeting the conditions specified in § 310.3 by persons duly authorized by the Indian Arts and Crafts Board to affix such marks.

§ 310.3 Conditions.

No article may carry the Government mark of genuineness for Alaskan Indian hand-made products unless all of the following conditions are met:

(a) The article is hand-made by an Alaskan Indian.

(b) The article is hand-made under conditions not resembling a workshop or factory system.

(c) All raw materials used in carving, basketry and mat making, and all furs and hides used in the manufacture of hand-made artifacts, must be of native origin.

§ 310.4 Application of mark.

All marks shall be applied to the article with a rubber stamp to be furnished by the Indian Arts and Crafts Board. Each stamp shall bear a distinctive letter and may be used only by the person to whom it has been issued. With the addition of the distinctive letter, each stamp shall read:

( )

HAND-MADE

ALASKAN INDIAN

U S

INDIAN ARTS & CRAFTS BOARD

I D

or, in the case of articles too small to carry this stamp:

( )

U S I D

ALASKAN INDIAN

On baskets and fabrics which offer no surface for the application of such a rubber stamp, the stamp shall be placed on a paper tag attached to the article by a wire caught in a lead seal disc that shall be impressed and made fast with a hand seal press furnished by the Indian Arts and Crafts Board.

ALASKAN ESKIMO

§ 310.5 Certificates of genuineness, authority to affix.

Government marks of genuineness for Alaskan Eskimo hand-made products may be affixed to articles meeting the conditions specified in § 310.6 by persons duly authorized by the Indian Arts and Crafts Board to affix such marks.

§ 310.6 Conditions.

No article may carry the Government mark of genuineness for Alaskan Eskimo hand-made products unless all of the following conditions are met:

(a) The article is hand-made by an Alaskan Eskimo.

(b) The article is hand-made under conditions not resembling a workshop or factory system.

(c) All raw materials used in the making of the articles are of native origin except:

(1) Commercial fasteners.

(2) Calfskin trimmings for decorative borders on parkas and mukluks.

(3) Tops for mukluks made of commercial fabric.

(4) Commercially made draw-cords for mukluks.

(5) Commercial fabrics for parka linings.

(6) Sewing thread and glass beads.

§ 310.7 Application of mark.

All marks shall be applied to the article with a rubber stamp to be furnished by the Indian Arts and Crafts Board. Each stamp shall bear a distinctive letter and may be used only by the person to whom it has been issued. With the addition of the distinctive letter, each stamp shall read:

( )

HAND-MADE

ALASKAN ESKIMO

U S

INDIAN ARTS & CRAFTS BOARD

I D

or, in the case of articles too small to carry this stamp:

( )

U S I D

ALASKAN ESKIMO

On baskets and fabrics which offer no surface for the application of such a rubber stamp, the stamp shall be placed on a paper tag attached to the article by a wire caught in a lead seal disc that shall be impressed and made fast with a hand seal press furnished by the Indian Arts and Crafts Board.

CHAPTER III—INDIAN CLAIMS COMMISSION

Editorial Note: The existence of the Indian Claims Commission was terminated effective September 30, 1978, and all pending cases were transferred to the Court of Claims, under Pub. L. 94-465 (90 Stat. 1990).

Title 25, Chapter III was deleted from the CODE OF FEDERAL REGULATIONS by a notice published on April 4, 1980 (45 FR 22924).

Title 25 of the CODE OF FEDERAL REGULATIONS, revised as of April 1, 1979, contains the last complete publication of the former regulations of the Indian Claims Commission.

For FEDERAL REGISTER citations to regulations issued by the Indian Claims Commission since its establishment in 1946, see the List of CFR Sections Affected for 25 CFR Chapter III at the back of this volume, and the separate publication entitled "List of Sections Affected 1949-1963".

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CHAPTER IV—NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

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PART 700—COMMISSION OPERATIONS AND RELOCATION PROCEDURES

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AUTHORITY: Pub. L. 93-531, 88 Stat. 1712 (25 U.S.C. 640d—640d-24).

SOURCE: 41 FR 49982, Nov. 12, 1976, unless otherwise noted.

§ 700.1 Purpose.

These regulations are designed to insure fair, equitable and uniform treatment of persons displaced by partitionment of the 1882 Executive Order area and the 1934 Boundary Act area; to set forth the procedures by which the Commission shall operate; and to implement the provisions of the Act of December 22, 1974 (Pub. L. 93-531, 88 Stat. 1712).

§ 700.2 Scope.

The regulations apply to the programs of the Navajo and Hopi Indian Relocation Commission. The geographical coverage is limited to serve the residents of the lands lying within the joint use area of the reservation established by the Executive Order of December 16, 1882, and lands lying within the reservation described by the Act of June 14, 1934 (48 Stat. 960).

§ 700.3 Applicability.

The provisions of this Act and the regulations in this part apply to the operations of the Commission, its members and employees, and to all persons displaced by partitionment of the Joint Use Area and the 1934 Boundary Act.

§ 700.4 Objectives.

The objectives of these regulations are to facilitate development of a relocation plan according to the Act, and to carry out the directed relocation as promptly and fairly as possible, with a minimum of hardship and discomfort to the relocatees, in accordance with the act.

§ 700.5 Definitions.

As used in this part:

(a) *The Act.* "The Act" is Pub. L. 93-531, (88 Stat. 1712) approved December 22, 1974, providing for the final settlement of the conflicting rights and interest of the Navajo and Hopi tribes to and in the lands lying within the joint use area of the reservation established by Executive Order of December 16, 1882, hereinafter referred to as the Joint Use Area, and land lying within the reservation described by the Act of June 14, 1934 hereinafter referred to as the 1934 Boundary Act, and for other purposes.

(b) *Actual notice.* "Actual notice" shall mean notice actually received in a form that is reasonably understood by a person with the same education and same language skills as the person receiving the notice.

(c) *Adequate notice.* "Adequate notice" shall mean notice reasonably calculated to inform the recipient of the content and import of the information contained in such notice and reasonably calculated to be called to the physical attention of said recipient.

(d) *Appraisal.* An "appraisal" shall refer to the value placed on the habitation and other improvements owned by a relocatee that are fixtures on the land, which cannot be moved without substantial damage or unreasonable cost.

(e) *Appraisers.* "Appraisers" shall be suitably qualified and disinterested persons appointed or hired by the

Commission to make an appraisal of the habitation and other improvements on the land owned by the relocatees. All compensation for the appraisers shall be paid by the Commission.

(f) *Business.* The term "business" means any lawful activity, except a farm operation, conducted primarily;

(1) For the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(2) For the sale of service to the public;

(3) By a non profit organization; or

(4) For assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property or service by the direction and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(g) Commission. The "Commission" is an independent entity in the Executive Branch established pursuant to Section 12(a) of the Act. The Commission is composed of three members and shall carry out the purposes of the Act as directed.

(h) *Commission staff.* The "Commission staff" are those persons hired or appointed as full or part-time employees of the Commission to carry out the duties and functions of the Commission as directed by its members.

(i) *Consultants.* "Consultants" are persons hired by the Commission to do specific acts or functions as directed by the Commission.

(j) *Displaced person.* "Displaced person" means any person who has to be moved under the terms of the act. This term is synonymous with the term "relocatee".

(k) *Dwelling.* A "dwelling" is the place of permanent or customarily usual abode of a person, including a single family dwelling; a single family unit and a two family, multifamily, or multipurpose, dwelling; a cooperative housing project; a nonhousekeeping unit or any other residential unit, including a mobile home which cannot be moved without substantial damage or unreasonable cost.

(l) *Comparable replacement dwelling.* A "comparable replacement dwelling" is a dwelling which is:

(1) Decent, safe and sanitary, and comparable to the acquired dwelling with respect to the number of rooms or habitable living space, but in any event adequate to accommodate the displaced persons;

(2) In an area not subject to unreasonable adverse environmental conditions from either natural or man made sources, and not generally less desirable than the acquired dwelling with respect to public utilities, public and commercial facilities and reasonable access to the displaced person's present or potential place of employment;

(3) Available on private market to the displaced person and available to all persons regardless of race, color, religion or national origin in a manner consistent with Title VIII of the Civil Rights Act of 1968, which is available to all persons regardless of sex;

(4) To the extent practicable and where consistent with paragraph (l)(1) of this section, functionally equivalent and substantially the same as the acquired dwelling, but not excluding newly constructed housing;

(5) Within the financial means of the displaced persons, providing that this paragraph shall be construed only in accordance with the intent to put such persons in an equal or better position. However, if the housing meeting the requirements of this paragraph is not available, the Commission may, on proper finding of the need therefore, consider available housing exceeding these basic criteria.

(m) *Decent, safe and sanitary housing.* "Decent, safe and sanitary housing" means housing in sound, clean and weathertight condition, in conformance with local housing codes, and which meets the following minimum standards:

(1) Each housekeeping unit shall include a kitchen with a full usable sink, a stove, or connection for a stove, a separate and complete bathroom, hot and cold running water in both bathroom and kitchen, adequate and safe wiring systems for lighting and other electrical services, and heating as re-

quired by climatic conditions and local codes.

(2) Each nonhousekeeping unit shall be in conformance with local code standards for boarding houses, hotels or other dwellings for congregate living.

(3) Occupancy standards shall be in conformance with local code.

(n) *Farm operation.* The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(o) *Federal agency.* The term "Federal agency" means any department, agency or instrumentality in the Executive Branch of the United States Government.

(p) *Habitation.* The "habitation" shall mean the principal place of residence of the displaced person. This term is synonymous with the term "dwelling".

(q) *Head of household.* A person who qualifies as a "head of household" under the Internal Revenue Code of 1954, as amended; or a married couple; or a widow or widower; or any single person who maintains a separate home and did so for a period of one year prior to the effective date of these regulations shall qualify as a head of household under these regulations.

(r) *Improvements.* "Improvements" shall be fixtures added to the land, including a business, in addition to the habitation, which cannot readily be moved without substantial damage, or whose movement would require unreasonable cost.

(s) *Livestock.* "Livestock" shall include all domesticated animals of every type owned by the displaced person.

(t) *Moving expenses.* "Moving expenses" means:

(1) The actual reasonable expenses in moving the dislocated person, his family, his business, farm operation or other personal property;

(2) The actual direct loss of tangible personal property as a result of moving or discontinuing a business or farm operations, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the Commission; and

(3) Actual reasonable expenses in searching for a replacement business or farm.

(u) *Person.* The term "person" means any individual, partnership, corporation, association, or farm operation.

(v) *Relocatee.* The term "relocatee" means a member of the Hopi Tribe within the area partitioned to the Navajo Tribe or a member of the Navajo Tribe within the area partitioned to the Hopi Tribe who must be relocated pursuant to the Act. This term shall be synonymous with the term "displaced person".

(w) *Relocation report.* The "relocation report" shall be the report prepared by the Commission and submitted to Congress pursuant to section 13 of the Act.

(x) *Relocation plan.* The "relocation plan" shall be a detailed plan providing for the relocation of the households and the members identified pursuant to the relocation report submitted to Congress, and shall be developed in accordance with the Act.

(y) Resident (or Residency)

(1) Residency is established by fulfilling either of the following criteria:

(i) Current occupancy

(ii) Maintenance of substantial recurring contacts with an identifiable homesite although the individual is temporarily away for any of the following reasons:

(A) Employment, and seeking employment

(B) Education or job training

(C) Medical

(D) Military (active duty in the military service)

(E) Unavailability of Housing

(F) Incarceration

(2)(i) Any one or more of the following criteria may be considered in establishing whether or not there have been substantial recurring contacts:

(A) Ownership of livestock

(B) Ownership of improvements

(C) Grazing permits

(D) Livestock sales receipts

(E) Homesite leases

(F) Public Health Records
(G) Medical and Hospital records, including those of Medicinemen
(H) Trading Post records
(I) School records
(J) Military records
(K) Employment records
(L) Mailing address records
(M) Banking records
(N) Drivers License records
(O) Voting Records (Tribal and County)
(P) Home ownership or rental off the Disputed Area
(Q) B.I.A. Census Data
(R) Certification from Chapter Officials
(S) Certification of Residency
(T) Certification by Relocatee
(U) Information obtained by Certification Field Investigation
(V) Social Security Administration
(W) Marital records
(X) Court Records
(Y) Records of Birth
(Z) Joint Use Area Roster
(aa) Any other relevant data

(z) *State.* The term "state" means any of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States, the territory of the Pacific Islands, and any political subdivision thereof.

[41 FR 49982, Nov. 12, 1976, as amended at 44 FR 13007, Mar. 9, 1979]

§ 700.6 Development of a relocation report.

(a) The relocation report shall be completed within 24 months from the issuance of an order of the District Court pursuant to sections 8 and 4 of the Act and shall contain:

(1) The names of all members of the Navajo Tribe who reside within the areas partitioned to the Hopi Tribe and the names of all members of the Hopi Tribe who reside within the areas partitioned to the Navajo Tribe.

(2) The fair market value of the habitations and improvements owned by the heads of households identified by the Commission as being named in paragraph (a)(1) of this section.

The plan shall:

(i) Be developed to the maximum extent feasible in consultation with the persons involved in such relocation and appropriate representatives of their tribal councils;

(ii) Take into account the adverse social, economic, cultural and other impacts of relocation on persons involved in such relocation and be developed to avoid or minimize, to the extent possible, such impacts;

(iii) Identify the sites to which such households shall be relocated including the distance involved;

(iv) Assure that housing and related community services, such as water, sewer, roads, schools, and health facilities, for such households shall be available at their relocation sites; and

(v) Take effect thirty days after the date of submission of the plan to the Congress.

(b) The Commission may utilize such hearings, meetings with the Navajo and Hopi Tribal Councils, meetings with appropriate chapter houses, meetings with such individuals or groups as they deem advisable, individual surveys, or such other methods as the Commission deems appropriate to gather the necessary information to develop the relocation report.

(c) The Commission may use whatever means they deem appropriate to provide adequate notice to all interested parties of the proceedings in their development of the relocation report.

(d) To develop the fair market value of the habitations and improvements owned by the heads of households identified by the Commission as being named in paragraph (a)(1) of this section:

(1) The property of the relocatees shall be appraised by such qualified appraiser or appraisers as shall be appointed by the Commission. Upon the completion of the appraisal report, the appraiser shall forward one copy of the report to the Commission and one copy to the relocatee.

(2) Appraisals of property of relocatees shall be provided first to those relocatees who apply for voluntary relocation on a first come first served basis. However, appraisals may be made in specified areas without regard to this requirement. All other appraisals shall be conducted as directed by the Commission.

(e) If the relocatee disagrees with the value placed on his property, he may appeal the appraisal to the Commission, which shall hold a hearing on such appeal pursuant to these regulations.

(f) The Commission shall publish a list of names of all individuals to be included in the relocation report at least 120 days before submitting the report to Congress. The list of names shall be published in a newspaper of general circulation in the area of the residence of the relocatee at least two times, and shall be posted in the chapter house of the chapter in which the relocatee resides.

(g) If any person feels a name was wrongfully left out of, or wrongfully put into, the relocation report, he may request the Commission staff to correct the error. If the staff refuses or fails to correct the error within 15 days of the request, he may appeal the staff's decision to the Commission, and the Commission shall hold a hearing on said appeal.

§ 700.7 Relocation.

Pursuant to the relocation plan, all members of the Navajo Tribe within the areas partitioned to the Hopi Tribe, and all members of the Hopi Tribe within the areas partitioned to the Navajo Tribe shall be relocated, except for those persons exempt from relocation by the Act. Such relocation shall be carried out within five years from the date the relocation plan takes effect as follows:

(a) *Voluntary relocation.* As soon as the Commission determines that it is practicable, relocatees may voluntarily begin relocation. Said relocatees who wish to relocate pursuant to this paragraph shall notify the Commission, in writing or by contacting a member of the Commission staff at the Commission's office during regular business hours, that they desire to relocate voluntarily and request an appraisal of their habitation and improvements, identify a site where they desire to be relocated, and sign a contract for the relocation.

(b) *Involuntary relocations.* (1) Relocatees who do not voluntarily contact the Commission for relocation shall be contacted by the Commission as soon as practicable after 30 days from the date the relocation report is submitted to Congress and shall:

(i) Request that the head of household choose an available area for relocation.

(ii) Make available to the relocatee suitable housing in an available area of his choice.

(iii) Arrange to purchase the relocatee's habitation and improvements.

(iv) Arrange for the relocatee and his family to be moved.

(2) If a relocatee fails or refuses to move after the actions in paragraph (b)(1) of this section are taken by the Commission, the Commission may order the relocatee to appear before it at a hearing and show cause why he should not relocate. If the relocatee fails to appear at said hearing, or refuses to relocate after a hearing and after the Commission orders him to relocate, the Commission may apply to a court of competent jurisdiction to order the relocatee to relocate pursuant to the Commission decision.

(3) Nothing in these regulations shall prevent either tribe from taking any action on its own, under its own court or any court of competent jurisdiction, to order a relocatee, who is wrongfully staying on the land beyond the legal time limit, to relocate.

§ 700.8 Commission hearings.

The Commission shall conduct such hearings as it deems appropriate or necessary pursuant to these regulations. Such hearings shall be conducted as follows:

(a) *Procedures.* The procedure at all hearings of the Commission shall be conducted in an informal manner with the goal of affording every person appearing at the hearing the right to fully state his position and to be heard on the issues.

(b) *Right of representation.* Any person appearing before the Commission may be represented by himself or by any other person he chooses, including an attorney at law.

(c) *Place.* Commission hearings shall be held at the regular office of the Commission or such other places as the Commission determines are convenient or necessary.

(d) *Notice of hearings.* Notice of all hearings held for the purpose of the development of a relocation plan shall be conducted pursuant to § 700.6(c). Notice of all other hearings shall be given by personal service or registered mail to all interested parties at least ten days prior to such hearings.

(e) *Rehearing.* In order to insure equity, a rehearing on any matter may be granted by the Commission upon a timely showing of good cause.

§ 700.9 Hearing officers.

The Commission may appoint such hearing officers as they deem appropriate to hear any matter pending before the Commission. Such hearing officer shall be a disinterested person and shall make a written report to the Commission on any hearing conducted by him. The Commission shall make a final determination based on the hearing officer's report. Any individual member of the Commission may act as a hearing officer.

§ 700.10 Payments for relocation and purchase of improvements.

(a) The Commission shall purchase from the head of each household whose household is required to relocate under the terms of the Act the habitation and other improvements owned by him on the area from which he is required to move. The purchase price shall be the fair market value of such habitation and improvements as determined under clause (2) of subsection (b) of section 13 of the Act.

(b) In addition to the payments made pursuant to paragraph (a) of this section, the Commission shall:

(1) Reimburse each head of household whose household is required to relocate pursuant to the Act for the actual reasonable moving expenses of the household as if the household members were displaced persons under section 202 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894);

(2) Pay to each head of household whose household is required to relocate pursuant to the Act an amount which when added to the fair market value of the habitation and improvements purchased under paragraph (a) of this section equals the reasonable costs of a comparable replacement dwelling adequate to accommodate such household: *Provided,* That the additional payment authorized by this paragraph shall not exceed $17,000 for a household of three or less and not more than $25,000 for a household of four or more, except that the Commission may, after consultation with the Secretary of Housing and Urban Development, annually increase or decrease such limitations to reflect changes in housing or development and construction costs, other than costs of land, during the preceding year: *Provided further,* That the additional payment authorized by this paragraph shall be made only to a head of household required to relocate pursuant to the Act who purchases and occupies such replacement dwelling not later than the end of the two-year period beginning on the date on which he receives from the Commission final payment for the habitation and improvements purchased under paragraph (a) of this section, or on the date on which such household moves from such habitation, whichever is the later date. The payments made pursuant to this paragraph shall be used only for the purpose of obtaining comparable replacement dwellings adequate to accommodate the households relocated pursuant to the Act.

(c) The Commission shall be responsible for the provision of housing for each household eligible for payments under this section in one of the following manners:

(1) Should any head of household apply for and become a participant or homebuyer in a mutual help housing or other home ownership opportunity project undertaken under the United States Housing Act of 1937 (50 Stat. 888), as amended (42 U.S.C. 1401), or in any other federally assisted housing program now or hereafter established, the amounts payable with respect to such household under paragraph (b)(2) of this section and under paragraph (a) of this section shall be paid to the local housing agency or sponsor involved as a voluntary equity payment and shall be credited against the outstanding indebtedness or purchase price of the household's home in the

project in a manner which will accelerate to the maximum extent possible the achievement by that household of debt free home ownership.

(2) Should any head of household wish to purchase or have constructed a dwelling which the Commission determines is decent, safe, sanitary, and adequate to accommodate the household, the amounts payable with respect to such household under paragraph (b)(2) of this section and under paragraph (a) of this section shall be paid to such head of household in connection with such purchase or construction in a manner which the Commission determines will assure the use of the funds for such purpose.

(3) Should any head of household not make timely arrangements for relocation housing, or should any head of household elect and enter into an agreement to have the Commission construct or acquire a home for the household, the Commission may use the amounts payable with respect to such household under paragraph (b)(2) of this section and under paragraph (a) of this section for the construction or acquisition (including enlargement or rehabilitation if necessary) of a home and related facilities for such household: *Provided,* That the Commission may combine the funds for any number of such households into one or more accounts from which the costs of such construction or acquisition may be paid on a project basis and the funds in such account or accounts shall remain available until expended: *Provided further,* That the title to each home constructed or acquired by the Commission pursuant to this paragraph shall be vested in the head of the household for which it was constructed or acquired upon occupancy by such household, but this shall not preclude such home being located on land held in trust by the United States.

(d) No payment shall be made pursuant to § 700.10 (a), (b) or (c) to or for any person who, later than one year prior to the date of enactment of the Act, moved into an area partitioned pursuant to section 8 or section 3 or 4 of the Act to a tribe of which he is not a member.

(e)(1) In addition to the payments made pursuant to section 15 of the Act, the Commission shall make payments to heads of households identified in the report prepared pursuant to section 13 of the Act upon the date of relocation of such households as determined by the Commission, in accordance with the following schedule:

(i) The sum of $5,000 to each head of a household who, prior to the expiration of one year after the effective date of the relocation plan, contracts with the Commission to relocate;

(ii) The sum of $4,000 to each head of household who is not elgible for the payment provided for in paragraph (e)(1)(i) of this section but who, prior to the expiration of two years after the effective date of the relocation plan, contracts with the Commission to relocate;

(iii) The sum of $3,000 to each head of household who is not eligible for the payments provided for in paragraph (e)(1) (i) or (ii) of this section but who, prior to the expiration of three years after the effective date of the relocation plan, contracts with the Commission to relocate; and

(iv) The sum of $2,000 to each head of household who is not eligible for the payments provided for in paragraph (e)(1) (i), (ii), or (iii) of this section but who, prior to the expiration of four years after the effective date of the relocation plan, contracts with the Commission to relocate.

(2) No payment shall be made pursuant to this section to or for any person who, after May 29, 1974, moved into an area partitioned pursuant to section 8 or section 3 or 4 of the Act, to a tribe of which he is not a member.

(3) The date for determining what, if any, voluntary bonus a relocatee shall receive shall be determined by the date the Commission receives a notice from the relocatee that the relocatee desires to be relocated, as provided in § 700.7(a).

(f) The Commission shall purchase the habitation and other improvements owned by all Indian absentee owners that are located in an area partitioned to a tribe of which they are not members. The purchase price shall be the fair market value of such habitation and improvements.

(g) All payments made pursuant to these regulations shall be made promptly after the individual becomes eligible for said payments.

§ 700.11 Relocation standards.

The following standards and procedures shall govern all relocation of displaced persons:

(a) *Notice of displacement.* The Commission is responsible for administration of programs affected by the Act and shall give a written notice of displacement to each individual, family, business, or farm operation to be displaced after partitionment. Such notice shall be served personally or by certified mail. However, the Act authorizes and directs the Commission to proceed with voluntary relocations as promptly as practicable following its first meeting.

(b) *Eligibility Requirements.* (1) To be eligible as a displaced person for benefits provided for under the Act, and these regulations, a person must meet one of the following conditions:

(A) The person must be a resident in the area partitioned to the tribe of which he is not a member; or,

(B) The person was a resident in the Joint Use Area but moved from there between December 22, 1974, and August 30, 1978; or,

(C) The person was a resident of an area which was partitioned to a tribe of which he is not a member but moved therefrom after August 30, 1978.

(2) Moves described in paragraphs (1) (b) and (1) (c) are presumed to have been made pursuant to the Act.

(3) Eligibility for certain benefits is further restricted by Sections 14(c) and 15(c) of the Act (25 U.S.C. 640-d-13) and 14(c) as reflected in Sections 700.10 (d) and (e) 2 of these regulations.

(c) *Statement of just compensation to the owner.* The Commission shall provide the owner of property to be acquired with a written statement of, and a summary basis for the amount established as just compensation. The summary statement shall include the following:

(1) Identification of the property and its location including all habitations, buildings, structures, improvements, business or farm operation.

(2) A statement explaining the basis for the determination of just compensation and that such compensation:

(i) Is based on the estimated fair market value of the property.

(ii) Is not less than the approved appraisal of the property.

(d) *Uniform Relocation Assistance and Real Property Acquisition Policies Act.* The provisions of these regulations and this paragraph shall be carried out in a manner that is consistent with the Federal Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894). If provisions of these regulations are inconsistent therewith, the Relocation Assistance and Real Property Acquisition Policies Act shall govern.

[41 FR 49982, Nov. 12, 1976, as amended at 44 FR 13007, Mar. 9, 1979]

§ 700.12 Disposal of property.

Property acquired by the Commission pursuant to the Act shall be disposed of in one of the following manners:

(a) If the Commission determines that the property acquired constitutes a substantial risk to public health and safety, the Commission may remove or destroy the property.

(b) The Commission may transfer the property acquired by gratuitous conveyance to the tribe exercising jurisdiction over the area. Notice of such transfer shall be in writing and shall be completed within thirty days from the finalization of all property acquisition procedures, unless the tribe notifies the Commission in writing within that time that the property transfer is refused. In the event of a refusal by the tribe, the Commission shall remove or destroy the property.

[44 FR 43719, July 26, 1979]

§ 700.13 Public information.

Any person may obtain information concerning the procedures or decisions of the Commission, or any information from the Commission that is not of a confidential nature by notifying the Commission in writing at 2708 North 4th Street, Flagstaff, Arizona 86001 describing the nature and type of in-

formation he desires and by paying the actual cost of producing said information by the Commission. If it is not possible to determine said actual cost prior to the request, the Commission shall immediately notify the person requesting said information of the cost and shall make the information available as soon as possible after the receipt of said cost. This provision shall be interpreted in connection with the Freedom of Information Act, and if these regulations contain any provisions inconsistent therewith, the Freedom of Information Act shall govern.

§ 700.14 Internal operations.

The internal operations of the Commission and the duties and regulations of Commission employees shall be governed by management memoranda, passed, amended, or repealed by a majority of the Commission at any regular or special meeting. The Commission shall hold a regular monthly meeting on the first Friday of each month unless said Friday falls on a legal holiday; and in that event, the meeting shall begin on the next regular workday at the main office of the Commission. Said monthly meeting may continue for as many days thereafter as is necessary to complete the regular affairs of the Commission, and may be adjourned from time to time by the Commission and reconvened at any time designated by the Commission at their regular meeting.

[44 FR 65750, Nov. 15, 1979]

§ 700.15 Compliance with Federal law and District Court decisions.

If any provisions of these regulations are contrary to Federal law or orders of the District Court, said Federal law or said order of the District Court shall govern and may supersede, supplant or repeal these regulations.

§ 700.16 Cooperation and concurrent action with other Federal agencies and State agencies.

The Commission may cooperate with any Federal or State agencies administering programs which may be of assistance to displaced persons covered by the Act, and shall cooperate to the maximum extent possible with any Federal or State agencies to insure that the provisions of the Act are carried out to the full intent of Congress.

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